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The Nature of Ejectione Firme; the Difference between it and Trespass, and how to be brought or removed where the Lands lie in Franchises. In what Cases this Action lies, or not. Of the old Way of sealing Leases, and of the new Practice. Of confessing Lease, Entry, and Ouster. Of what Things Ejectione Firme lies, or not. Of Declarations in this Action. Of Venues, Issue, Trial.

AS ALSO,

Who are good Witnesses or not in the Trial on Ejectment, and what shall be allowed good Evidence or not, either as to Records or Matters in Fair. Where Bills, Answers, and Depositions, shall be read on a Trial, or not, in several good Resolutions.

Together with

The Learning of Special Verdicts at large, relating to Titles of Land and Estates, in several Rules; and of Judgments, with their several Forms of Entries in Special Cases; and of Habere facias Possessimen, how to be executed; and in what Cases a new Habere facias Possessimen shall be granted. And Lastly, Of Erroneous Judgments, and Writs of Error, and several other Matters, all relating to Actions of Ejectments.

The Second Edition.

With Additions of late Rules of Practice, and adjudg'd Cases; very necessary for all Lawyers, Attorneys, and other Persons, especially at the Assizes, &c.

In the SAVOY: 3° Printed by J. Rutt, Assignee of Edward Sayer Esq; for J. Malthoe in the Middle-Temple-Cloysters.

918 LAW E 36

Rec. Feb. 12, 1881

THE

PREFACE

TO THE

READER.

PON the first View of the Title of this Treatise, I doubt not but many Perons will slight it, being upon a Topick well known and underood (as they imagine) by even very Pretender to the Law: there's not the least Sollicitor or trorney in any Nook of Cornall, or Corner of Cumberland, ut thinks he is Privy to the whole A Learn-

Learning of Ejectments. And yet if they would take the Pains to peruse the ensuing Sheets, they doubtless may be of another Opinion, and will find very useful and proper Matter relating to an Action which concerns the greatest Titles in the Kingdom, and has made so great a Noise at the Bar, and in the Circuits for Sixty Years last

paft.

Besides, if there happen any material Mistake in this Action, the Remedy is very chargeable I remember Mr. Levett's Case of the Inner-Temple; (the Argument whereof made by a very Ingenious Professor of the Law, I have herein inserted.) The Record was an Isfue of Trinity Term 1696. and the Demise is laid the 10th of April 1697. Habendum from the 25th Day of March then last past; whereas the Demise Should have

have been laid the 10th of April 1696. And the Mr. Levett had a Verdict, yet he could not have Judgment, but was forced to a new Trial at Bar. And many more such Instances might be given.

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I shall not dare to deliver my Opinion concerning the Change of Real Actions into Ejectione Firme, but I know many Grave Lawyers bave grumbled at the Inconveniencies of a Man's being too obnoxious to be trick'd out of Possession.

However, this we must all allow, That since the said Alteration, the Common Law hath lost a great Part of the Beauty and Nicety of its Pleading.

I have been large under Two of he ensuing Titles; I mean that of ividence, and the other of Special Terdicts: Who shall be allowed as sood Witnesses, or not; and what hall be look'd upon as sufficient A 2

Evidence both as to Matter of Record, or Matter en Fait, in this Action, is of great Use to be understood; and the Cases that lay dispers'd in our Books for that Purpose, I have reduced to some Method.

And as for the right and exact drawing of Special Verdicts, we all own it to be an undeniable Argument of a good Understanding in the Law, and of very great Confequence, especially those which concern Title of Lands and Estates.

Note, This Second Edition hath not only the Addition of some Cases omitted in the former, but of all that have been adjudged since.

As for the Errata's of the Printer, the Judicious Reader will find that they will not much interrupt the Sense; and as for my own, humbly beg Pardon.

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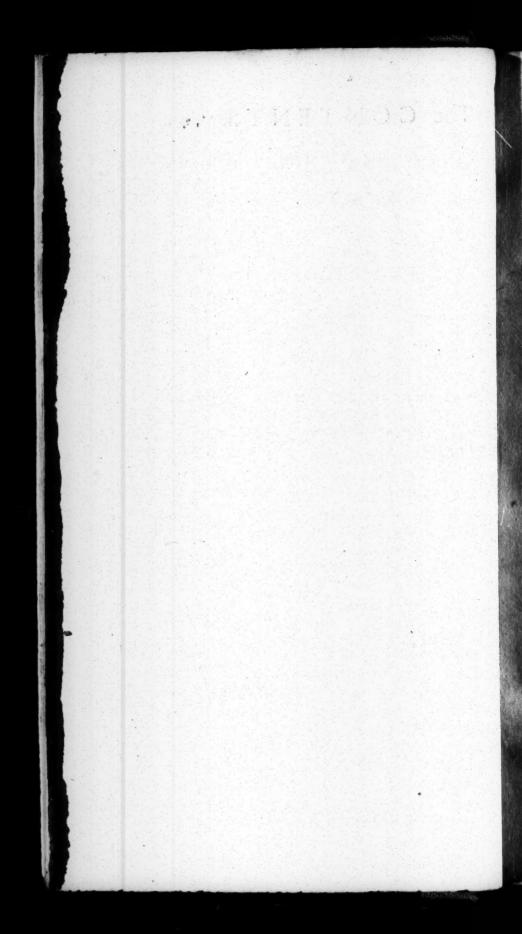
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bere it lies. Of what Error the Court shall take Conisance without Diminution or Certificate. Variance between the Writ and Declaration. Variance between the Record and the Writ of Error. One Defendant dies after Issue and before Verdia. Nonage in Issue on Error, where to be tried. Amendment of the Judgment before Certiorari unaided. Release of Errors from one of the Plaintists in the Writ of Error, bars only him that released it, and why. Outlawry in one of the Plaintists pleaded in Error. Of Release of Errors by casual Ejector.

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EJECTMENTS.

A brief Discourse of Entry into Land, for vesting and devesting of an Estate; which will give Light into the Change of the Law, as to the Rule of Confessing, Entry in Ejectment, and of Entry into Parcel in the Name of all.

Entry, and Congeable Entry.

OMEstake a Difference, where an Entry shall vest or devest an Estate, there ought to be several Entries into several Parcels; but where the Possession in no Man, but the Freehold in Law is in the Heir who enters, there the general Entry into one Part shall reduce all into his Possession. Vid. 1 Inst. 15. b. Disseisor makes a Lease for Years of Part, Disseise enters B

upon the Disseisor in the Name of the Whole; this is a good Entry into all the Lands in the Hands of the Lessee, Fulgean and Frances's

Cafe, 33 El. B. R. Mf.

It was held per Cur. in Lovet and Rengy's Case, Pasc. 9 Fac. B. R. in Evidence to a Jury, that if a Disseisor make several Leases for Years of several Parcels of Land to several Persons, and the Disseise enter into any Part of the Land, and feal and deliver a Leafe for Years of it in the Name of all, this is a good Entry into all, and a good Leafe of all: and if the Lesses of the Disseisor continue Possession, this is an Ouster, and the Lessee of the Disseise shall maintain Eject. Firme upon this of all; but otherwise it is where the Termors claim by and under feveral Titles, for there he who pretends a Right ought to enter upon every Termor. I Inft. 252. Accord.

Diffeifor of Lands in Three feveral Vills of A. B. and C. levies a Fine of that in A. to 7. S. The Diffeise within Five Years makes a Letter of Attorney to enter into all the Three, the Attorney enters into B. and C. in the Name of all; per Cur. this is not an Entry into that in A. for J. S. had there distinct Freehold per Title; and for every Freehold Freehold, se- several Entry ought to be, Dyer 337. b.

For every veral Entries. 9 H. 7. 25.

If A. feal a Leafe upon Black-Acre and White-Acre to B. C. a Stranger enters into White-Acre, this is an Entry into both Acres,

The Entry of and B. may have Ejectione Firme against C. for both Acres, for C. cannot apportion his a Stranger not to be ap-Wrong, as was held by Juffice Hutton, in Eviportioned. dence

dence to a Jury at Sarum, and agreed by Fermin, anno 1649. Mf.,

Vid. Coke on Litt. 92. a. and 252.

A. Occupies White-house, Black house and Red house: 7. S. who had a Right to all entered into White-house and departs, leaving A. there; then he entered into Black-house and departed, leaving B. there; then he entered into Red-house and there seals a Lease for Years to J. N. of that House, and naming the other Two Houses: J. N. brought Ejectione Firme for the Two Houses in which the Leafe was not delivered, and the Opinion of the Court was against him, that he was barred in that Action; for the Entry or Con. Entry, and tinuance of him who occupied it before, de- leaving a Perfeated the Entry of the Plaintiff or Lessor, House to keep and the Plaintiff was forced to be nonfuit. Poffession. Alias if he had left one behind him in each House, M. 28 & 29 El. B. R. Earl of Kem's Cafe. Hughes 72. 6. 8. 50 21 6.72.

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A. disseiseth B. of White-Acre ist of May, and of Black-Acre 2d of May; B. enters into one Acre in the Name of both, this is good for both if they be in one County, per Frovick, 9 H. 7. 25. a. alias if they be in divers

Counties, ib. A. Lessee for 21 Years of White-Acre, nd Black-Acre is ousted by B. who lets White Acre to C. for 10 Years, and Blackcre to D. for 10 Years, A. enters into White-Acre in the Name of both: It is not good to Whereseveral reduce Black-Acre, but he ought to make fe. Entries ought eral Entries, because C. and D. have as high to be. n Estate as A. tenus per Cur. in Elizeus Fox's Case, 4 Car. B. R. Ex relatione Maj. Maynard.

The Law of Ejectments.

Where the Entry for one is Entry for another,

Entry of one Tenant in Common, is Entry for the other. Hob. 120. Altho' he enters generally, ib. So if he enter and claim all. ib.

Leffee for Life acknowledgeth a Statute, makes a Feoffment, the Conifee extend, this shall revest the Reversion. Whet son's Case, 41 Eliz.

Difference between Right of Entry, and Title of Entry.

Right of Entry, Quid.

It is, when one feifed of Land in Fee is diffeised of it: Now the Diffeisee hath Right allow by that of Entry into the Land, and may enter when he will, or he may have a Writ of Right.

Entry mand be Right is, where one hath a Thing which made in 20 anwas taken from another per Tort, as by Difafter The Remodeisin, &c. this Challenge or Claim which he hath who had the Thing, is termed a Right,

Plo. 484.

If A. devise Lands to B and C. his Executors to fell, and die, the Heir abates; B. and C. have Right of Entry, upon the Book of

9 H. 6. 25. 4.

Tolled by Discent.

If A. enfeoffs B. upon Condition, and B. is disseised by C. C. dies seised, and the Land descends to D. the Heir of C. this Discent takes away the Entry of B. for B. hath a Right to the Land, and shall recover his Right by Action. 1 Inft. 240. a.

Title of Entry.

Title of Entry is, when one feifed of Lands in Fee makes a Feoffment of it upon Condition,

tion, and the Condition is broken; now after the Condition broken, the Feoffor hath Title to enter, and fo he may if he will, and by his Entry the Franktenement shall be said in him presently; and it is called Title of Entry, because he cannot have Writ of Right against the Feoffee, on Condition, for his Right was out of him by the Feoffment, which he cannot reduce without Entry, and the Entry ought to be for the Breach of the Condition.

Where one hath Title of Entry, there no other of his own Head may enter for him, per Chief Justice Roll and Justice Nicholas, 28 March 1650, be it in the Cafe of an Infant or other, for this is a Thing elegible, as Bailiff cannot enter for Condition broken without special Command of his Master.

Dyer 222. a.

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But as to a Right of Entry, where an Infant or a Man of full Age is diffeifed, Entry by a Stranger of his own Head is good, and vests the Estate in the Infant or other Disseisee. 1 Inft. 245. a.

Vid. Hob. 120. Small and Dale, pluis, Where the Entry of one shall go to another, or not.

It was held per Cur' in Lovet and Rener's 4. 5, ande 2. Case, in B. R. Pasc. o Fac., in Evidence to a Jury, That if a Diffeifor makes several Leases for Years of feveral Parts of Land to feveral Persons, and the Disseise enter into any Part of the Land, and there seal and deliver a Disseise seal-Lease for Years of all, in the Name of all, ing a Lease of this is a good Entry into all, and a good Parcel in the Lease of all; and if the Lessees of the Dissei. Name of all. for continue Possession, this is an Ouster, and the Lessee of the Disseise shall maintain B 3 Eject.

The Law of Ejeaments.

Ejett. Firme of this upon the Whole: But alias it is where the Termors claim by and under several Titles, for there he who pretends Right ought to enter upon every Termor. Coke super Litt. 252. b. plene.

Aliter had it been Lease pro Vie. Dyer

337. b. as,

A. diffeiseth B. of White-Acre and Black-Acre, A. lets White Acre to C. for Life, and Black-Acre to D. for Life; now if B. would make a Lease to J. S. for Years to try the Title in Ejest. Firme, let B. enter into White. Acre and place One or Two there to keep Possession for him there, and after this, let B. enter into Black-Acre, and there seal and deliver the Lease of both Acres to J. S. This is good for both, if the Parties placed keep Possession until the Lease be sealed and delivered; but the surest Way was to make several Leases, and thereupon to have several Ejestione Firme's.

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CHAP. I.

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The Nature of the Action of Ejectione Firme, and of the Change of Real Actions into Ejectments. Difference between an Action of Trespass and Ejectment in Five Diversities. By it the Possession shall be recovered, and the Inheritance revested in the Lesson. Difference between Ejectione Firme, and Quare Ejecit infra Terminum; in what Court this Action is to be brought or not, and of Removal by Procedendo into inferior Courts. The Action continues for Damages after the Term is ended.

THis Action of Ejectione Firme includes in it self an Action of Trespals, as appears by the Beginning, Body and Conclusion of the Writ; for the Writ begins thus: Si A. fe. cerit te securum de clamore suo prosequendo tunc pone, &c. and so begins the Writ of Trespass. The Body of the Writ of Ejectione Firme is, Quare unum Messuagium Vi & Armis fregit & intravit; and all the Addition in the Ejectione Firme is, Et ipsum à firma sua inde ejecit, Oc. The Conclusion of both is, Et alia enormia ei intulit ad grave damnum; and the Trespass and Ejectment are so woven and intermix'd together, that they cannot be severed; and the Entry in an Ejectione Firme is, In plito' Transgressionis & Ejectionis Firme. In 6 R. 2. Tit. Eject' Firme a. it is called an Action of Trespals in its Nature. The Consequence of this is, That in this Action, Accord with Sadistaction is a good Plea. And Accord and B 4 SatifSatisfaction for one shall discharge all the Trespassers and Ejectors; and tho the Term (which is a Chattel Real) shall be recovered as well as Damages, yet it is a good Plea.

Ejectione Firme includes in it self an Action

of Trespass. 9 Rep. 78. a.

Eject. Firme is in Part by the Realty, and in it the Possession shall be recovered by Habere fac' Possessionem, and by this the Possession and Inheritance shall be revested in the Lessor.

9 Rep. 77. b. 5 Rep. 105. a.

Now tho' we find few Titles of Ejectione Firme in our Old Books, yet it was in Use all along; it was used in Bracton's Time, and Term and Damages were recovered therein. In tempore H. 3. he saith, Si quis ejiciatur de usu fructu vel babitatione alicujus tenementi quod tenuit ad terminum annorum ante terminum (uum, there the Lessee shall have a Writ of Covenant against his Lessor; and against his Vendee he shall have a Quare Ejecit infra Terminum; and as well against the Lessor as a Stranger, an Ejectione Firme.

But this Action came to be more frequent in my Lord Dyer's Time, as may appear by his Complaint in Court when he was Lord Chief Justice of the Common-Pleas; which also gives us the Reason of the Change of of the Change Real Actions into Ejectments; All Actions (saith he) almost which concern the Realty, are determined in the King's-Bench by Writs of Ejectione Firme, whereby the Judgment is, Quod recuperet Terminum, and by that they are foon put into Possession. And therefore in a Formedon it was prayed by Council that they might

The Reason of Real Actions into Ejectione Firme's.

ight proceed without Essoins, and seint Deys, because the Plaintiff's Title appeared. which my Lord Dyer granted, Because (faid e) this Court is debased and lessened, and the ling's-Bench doth increase with such Actions which should be sued here, for the Speed which there: And (continued he) no Action in Effect is brought here, but such Actions as cannot brought there, as Formedons, Writs of Dower, nd the like. And it is my Lord Chief Iutice Hale's Observation in his Presace to Rolls's bridgment: The Remedy by Assifes and several forms and Proceedings relating thereunto, were reat Titles in the Year-Books; and altho the Law not altered in relation to them, yet Use and ommon Practice bath in a great Measure antinated the Use of them by recovering Possessions, nd the Remedy by Ejectione Firme used instead bereof. So that rarely is any Affile brought, nless for recovering Possession of Offices. and so of Real Actions, as Writs of Right and Writs of Entry, which are feldom brought, inless in Wales, by a Quod ei deforceat. low the Entry of him that hath Right being wful. Men choose to recover their Possesons by Ejectione Firme. But there was a new Way invented to try Titles of Land in perfoal Actions, but was not allowed, as in 79emy and Simson's Case, 16 Car. 2. B. R.,

It was moved for Trial at Bar on a feigned Action on the Case, upon a Wager by Agreement of Parties, to have the Opinion of the Court of the Validity of a Will; but tho' the Action was laid in Middlesex, yet being an Innovation, and the Way to subvert Ejectione Firme's, which have subverted the Formedons,

and

and it sufficiently appearing seigned on the Record, in that the Title of Land is hereby to be tried in personal Actions, it was totally denied; but had it been by Direction of Chancery, the Court would do it, but would in no

wife grant this.

It was faid by Ellesmere Lord Chancellor. That until the 14 H. 7, it was never known that a Possession was removed by an Action of Ejectione Firme; and said, It was great Pity it was allowed at this Day for Law in England; and therefore was of Opinion, That an Action of Trespals, Quare clausum fregit, was much better to try the Title than an Ejectione Firm. 1. Because no Possession was removed by the 2. Because a Man may so plead in an Action of Trespals, as that he may make the Plaintiff disclose his Title; whereas by his Ejectione Firme it is no more than Non culp, and then a Trial, and so out of Possession without more Bufiness, which, he said, was a Pick-pocket Action. Ex MT., 3 Leon, p. 49.

This Action is grounded on Two Things,

(videlicet) the Lease and the Ejectment.

It was well observed in Eyres and Banister's Case, Moor Rep. 418. That Ejectione Firme in former Times was not thought to be an Action which concerned the Lessor, but only the proper Interest of the Lesser, but now of late Times it is put in ure by the Experience of the Judges and all others, that an Ejectione Firme is the Suit of the Lessor, and the Lease made only to try his Title, and to recover the Possession to him, and the Suit is prosecuted at his Charge, and his Lessee is but his Instru-

The Law of Ejectments.

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nstrument to this Purpose; and all this to void the Charge and Delay of a Real Action, and the Peril of being barred by a ingle Verdict. And Partridge and Strainge's Case, Plo. 78. was cited for the Purpose; if one being out of Possession above a Year. makes a Lease for Years, this is Maintenance within the Stat. 32 H. 8. and the Leffor and Vid. infra. the Lessee shall lose the Value of the Land; but if such a Person be at this Day possess'd of such a Lease to try the Title, and not by Contract, that the Leffee shall hold the Land, this is no Maintenance, as hath been resolved in B. C. B. R. and Star Chamber.

But for the better understanding the Nature of this Action, I shall shew wherein it differs from an Action of Trespass and a Quare Ejecit infra Terminum; for tho', as was observed before, it is in a Sort a Trespass, yet it

differs from it in several Things.

In Trespass, Damages are only to be recovered; but in Ejectione Firme, the Thing or Diversity Term it self is to be recovered as well as Da- Where the Damages are mages. In Ejectment, if the Term should ex- only recoverpire, hanging the Suit, the Plaintiff shall go ed, and where on to recover Damages; for tho' the Action the Term. be at an End, quoad the Possession, yet it continues for the Damages after the Term ended. 3 Mod. 249. And from hence another Difference is observable in respect of Certainty. If in Trespass the Plaintiff declares in one Acre, and abuts it, and the Jury find him guilty in dimidio Acræ prædici, or in one Foot of it, this is good, tho' the Moiety is not bounded, they have found the Trespals in the Moiety of the Acre bounded, and this fufficeth

ceth in this Action where Damages are only to be recovered: But if it were in Ejectione Firme, it had been ill; for it is not certain in what Part the Plaintiff shall have his Haben fac' Possessionem. And from this Diversity it is, that if an Ejectione Firme be brought against Two Defendants, the one consessent the Action, and the other pleads in Bar, Not Guilty, the Plaintiff cannot release his Suit as to one of the Defendants, and proceed against the other; but in Trespass in such Case he may, because this Suit is only in Point of Damages. Telv, 114. Winckworth and Man. 2 Bulstr. 53.

2. Diversity; Possession a good Title in Trespass, but not in Ejestment, and why.

Possession is a good Title for the Plaintiff in Trespass, if the Defendant hath not a bet. ter to shew; aliter in Ejectment, for in Eje-Etione Firme, if the Plaintiff hath not a Title according to his Declaration, he cannot recover, whether the Defendant hath Title or not, as was Corton's Cafe. An Infant leafeth Land to C. at Will, who entred and oufted S. who thereupon brought an Ejectione Firme, on a special Verdict no Title appeared to be in the Plaintiff, and it was objected against the Leafe at Will, because it was made by an Infant, and no Rent referved upon it, nor the Leafe made upon the Land, and therefore the Leffee should be a Disseisor: Per Cur', be the Defendant a Disseisor or not, it's not material here, for if the Plaintiff hath not Title according to his Declaration, he cannot recover; and it is not like to Trespass, where the very Possession without other Title is good. 1 Leon. 215. Cotton's Cafe.

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Naked Colour is not sufficient in Ejectione irme, as it is in Trespass; therefore if the Diversity; colaintiff make Title in Ejectment, this Title lour not fuffif the Plaintiff ought of Necessity to be an- cient in Ejewered, (viz.) either by Matter of Fact, or and why. Law, which confesseth and avoideth the litle, or traverseth it: For a naked Colour n this Action is not sufficient, as it is in Assife r Trespass, which comprehend not any Title r Conveyance in the Writ or Count, as this ction does in both; and in Godb. 159. in this ction a Man shall not give Colour, because he Plaintiff shall be adjudged in by Title. yer 366. Godb. 159. Piggot and Godder's Case.

Allowance of Conisance of Franchise in respass will not warrant an Ejectione Firme, Conisance of nless the Franchise had Conusance of all Trespass inleas, as was adjudged in the Cale of the Bi- Ejectments. op of Ely. Ter. P. 18 Car. 2. B. R.,

In Clerk's Case, the Venire Fac' was, Ad faelend' juratam in Placito Transgressionis, where should have been in Placito Transgressionis Ejectionis Firme, and the Court would not mend it; for though Ejectione Firme be but Plea of Trespass in its Nature, yet the Aions are feveral, and therefore the Venire fac' ought to be accordingly. Cr. El. 622. lerk's Cafe.

Ejectione Firme against Two Defendants; ne pleads Not guilty, the other pleads, the In Ejectment Plaintiff replies, and so Demurrer: No Judg- against two, one pleads to ment shall be given on the Demurrer till the Issue, and the Issue be tried; for in this Action the Posses other demurs, ion of the Land is to be recovered, and it may Issue first to be, for any Thing that appeareth, he who be tried.

5.

pleads

14 The Law of Ejenments.

pleads the general Issue, has Title to it; but if it had been an Action of Trespass, and the Plaintiff will release his Damages on the Issue joined, he shall have Judgment against the other. 2 Leon. 199. Drake and Monday.

Trespass is deins Stat. 21 Fac. which names Trespass generally, but Ejectment is not.

I Keb. 295. Power's Cafe.

The Plaintiff declares in Trespass in one Acre, and abuts it, the Jury find him guilty in dimidio Acre predict, this is good; but if it were in Ejectione, the Verdict had been ill; for it is not certain in what Part the Plaintiff shall have his Habere fac' Possessionem, Yelv. 114.

Note.
Ejetione and
Trespass for
Battery, both
one Writ.

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Ejectione Firme and Trespass of Battery were both in one Writ, and upon Not guilty, Verdict was given for the Plaintiff, both for the Ejectment and for the Battery, and entire Damages. Q. of the Judgment: For the Damages for the Battery could not be released, because they were entire with the Ejectment. Hob. 249. Bird and Snell.

Ejectione Firme against a Baron and Feme, which are but one Person in Law, yet if the Baron dies, the Suit shall proceed against the Wise; for it is in the Nature of a Trespass.

Hardr. 161.

Of the Difference between Ejectione Firme, and Quare ejecit infra Terminum.

Ejectione Firme lies against the immediate Ejector; but Quare ejecit lies against him who has Title, as against him in Reversion. 7 H 4 6. b.

Ejectione

Ejectione Firme is Vi & Armis, the other is Dt.

Quare ejecit infra Terminum lies against him ho is in by Title, as against the Vendee of e Lessor; but Ejectione Firme is against him

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In Ejectione Firme, if the Term expire hanging the Action, this shall not abate the Trit, but the Plaintiff shall have Judgment or his Damages. Aliter in Quare ejecit infra erminum.

Note, No Ejectione Firme was brought

gainst a Stranger before 14 H. 7.

At Common Law the Leffee had no ction but of Covenant against his Lessor, The Quare efecit infra Ejectione Firme. rminum is given by the Stat. W. 2. c. 24. for ecovery of his Term against the Feoffee; r Ejectione Firme lies not against him, beuse he came to the Land by Title of Feoffment, and not by Tort. Vaughan 127.

be what Court this Action is to be brought, or not, and of Removal by Procedendo to an Inferior Court.

It lies in Banco Regis and Banco Com-

It lies in the Exchequer, and for a Party ivileged by Bill. 1 Rep. 3. Pelham's Cale.

Note, Where the King's Revenue is conarned, the Ejectment ought to be brought in the Exchequer, as if a Man claims Title to In the Exche-Lands of a Person outlawed. Ejectione Firme quer. was brought in the Exchequer by Garroway gainst R.T. upon an Ejectment of Lands in Wales.

Wales, and it was maintainable as well as Intrusion on Lands in Wales upon the King him felf.

Upon Ejectment brought in the Court of Common-Pleas by the Defendant in the Ex. chequer, the Plaintiff moved that the Action might be laid in the Exchequer, because his Title was under an Extent out of this Coun for Debts in Aid; and so it was ordered, Hardr. p. 193. Sir Ralph Banks and Sir Tho. Bennet. Hardr. p. 176. Hammond's Cafe. Godb. 1. 296. Cafe 416.

This Action lies not in the Marshaller,

10 Rep. 72.

How Ejectment lies in Ancient Demeine.

It lies in the Court of Ancient Demelne if it be of Ancient Demesne Lands, and not in the King's Courts; and therefore in Ein Etione Firme brought above, Ancient Demelie is a good Plea. Vid. infra, Tit. Pleading 5 Rep. 105. Alden's Cafe.

After a fpecial Verdict found in C.B. the Plaintiff may bring a new Ejectment in B. R. aliter of the Defendant.

Ejectione Firme depends in B. C. and 1 special Verdict is found. The Plaintiff may bring a new Ejectment in the King's-Bench and it shall not abate, for it's no Inconve nience to any Person, the same being Plain tiff here and there; but if the Verdict had been for the Defendant in the Common Bench, then the Plaintiff cannot bring ! new Action in B. R. till Possession be given in Banco Communi according to the Verdict, Tr. 17 Car. 2. B. R. Shepard and Griffith.

Eiectment. Land in Jamaica, and why.

By Twifden in Crifp and Jackson's Cale, will not lie of the Reason why Ejectment will not lie of Lands in Famaica, or in any of the King's Foreign Territories, was, because the Court here

here could not command them to do Execution there, for they have no Sheriffs, I Ventr. P. 59.

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Tr. 14 Car. 2. It was ordered in B. R. That How Ejects in every Action of Trespass and Ejectment brought, if to be brought after that Time in the King's- the Lands lie Bench, if the Land did lie in the County of in Middlesex Middlesex, then a Bill of Middlesex should be or London. brought; and if the Lands lay in London, then Not removas a Writ of Latitat should be taken out against ble by a Pros the casual Ejector, named Defendant in every cedendo to a fuch Action.

If Ejectione Firme be removed from an Inferior Court by Habeas Corpus into the King's-Bench, it is not removable by Procedendo to a Franchise, as Oxon, Pole, Canterbury, &c. which only hold Plea of personal Actions: but in this Action he shall recover Possession, and have a Writ of Habere fac' Possessionem. and thereby he that hath a Freehold may be put out of Possession. And in Sabin's Cale, M. 13 Car. 2. B. R. Ejectione Firme was brought in the City and County of Canterbury, and removed into the King's-Bench by Habeas Corpus, and a Procedendo was pray- Procedendo des ed; but because Bail was put in in B. R. nied, because the Court denied the Procedendo, because Bail was put they were thereby seised of the Cause, Cro. Car. 87. Halley's Cafe. M. 13 Car. 2. B. R. Sabin's Cafe. Siderfin, p. 231.

Now in such Cases of Franchises, as Canterbury, Oxon, the Cinque Ports, &c. they suppole the Lease elsewhere in the County, and To be tried it shall be tried where it's supposed the Lease where it's to be made; and so by Wild in Sabin's Case. Lease is Upon Ejectment in the County of Canter. made.

bury,

Canterbury.

bury, one may declare upon a Demise in any Part of the County of Kent, and so try it at Maidstone; for the Venire comes always from the Place of the Demise, which was denied by Windham, the Body of the County being as another County from that of Canterbury.

But the Reason why the Court denied a Procedendo in Allen and Burney's Case, was because the Plaintiff below had not actually sealed a Lease, as he ought to have done, being an Inferior Court, M. 18 Car. 2. B. R.

Allen and Burney.

Marches of

Action was brought in the Court of the Marches of Wales in Nature of Ejectione Firme, and a Prohibition granted, because they are not to meddle with the Possessions of Men, unless in respect of Force, plena Curia, 2 Rolls Rep. 309.

CHAP.

CHAP. II.

Who shall have Ejectione Firme, and in what Cases this Action lies, or not, in respect of Posselfion, in respect of Entry congeable, in re-Spect of Exility of Estate. By Lessee of Copybold, and bow, and whether before Admittance, and the Manner of Declaring. Of Ejectment by Executors. Infant-Lessee of Simonist. On Elegit. On undue Extent, and in case of hold. ing over. By Intruder, by the King's Leffee, by a Person outlawed, by Lessee of Bail on Extent, by Judgment against the Principal, by Isue in Tail liable to a Statute, who comes not in and pleads to the Sci' fac', on Entry if the Grantee of Rent with Proviso for Retainer till Satisfaction of Arrears; by Cestuy que Trust; by Vendee of Commissioners of Bankrupt. Two Tenants in Common to make several Leases in Ejectment.

THE next to be handled, is, In what Cases this Action lies, and in what not; whereby the Reader may be so well informed, as not to hazard his Client's Cause, and

his own Reputation.

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Note, If the Heir bring an Ejectment, and the Ancestor dies subsequent to the Action, he shall not recover, because every one shall recover only according to the Right which he hath at the Time of the bringing his Action, in Wedywood and Bayley's Case, Raym. 463.

It

In respect of

It has been laid down for a constant Rule in our Books, That upon a Possession in Law, a Man shall never maintain an Ejectione Firme, but he ought to have actual Possesfion at the Time of the Ouster, as if Tenant for Years makes a Leafe at Will, and the Tenant at Will is ejected; the Question was in Stone and Grubbam's Case, 1 Rolls Rep. 2. if the Tenant for Years for this Ejectment of his Lessee at Will shall have an Ejectione Firme, and it was resolved that he should not. if Lessee for Years be the Remainder for Years, the Lessee for Years is ousted, his Term expires, he in Remainder for Years cannot have an Ejectione Firme, because he had no actual Possession at the Time of the Eiectment. So if a Lease for Years be made, and before the Lessee enters, a Stranger enters, he shall not have this Action. And upon this Reason of Law it is, that by the new Rule of Practice, the Defendant shall confess Entry and Ouster; but it has been resolved, That if Inquisition upon Elegit be found, the Party before Entry hath the Possession, and a Fine with Nonclaim shall bar his Right; for before actual Entry he may have Ejectione Firme or Trespass, and it is not like to an Interesse Termini.

In Smith and Rawlin's Case no Entry was proved to be by Dean and Chapter since 1631; yet in regard Rent had been actually paid, there the Lessee may bring Ejectment (without any Lease actually sealed on the Ground).

2 Keb. 127. Smith and Rawlins.

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A Corporation of Mayor and Aldermen are Lessors in Ejectment, and the Demise in

the Declaration is not mentioned to be by Deed, it was affigned for Error; but being after a Verdict, the Court would not allow

it. Patrick Ball, 8° W.

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Pollession of the Lessor of the Plaintiff must appear to be within Twenty Years, though the special Verdict be on another Point; fo Keb. 364. but 22 H. 8. c. 2. extends not to Common; but the Reversion in the King will Privilege the Lessor of the Plaintiff being but a Lessee for Ninety nine Years against such Want of Possession, 3 Keb. 681. Mic. 28 Car. 2. B. R. Piggot and the Lord Salisbury.

Leffee for Years shall only have this Action.

N. B. 120. F.

He whose Entry is not congeable by Law, In respect of cannot have Ejectione Firme, as in case of Entry cona Formedon in Remainder and Discontinu- geable. ance.

Lessor grants the Reversion to A. Lessee attorns, A. ousts him, Lessee shall have Ejectione Firme, N. B. 221. a. 1 H. 5. 3. pl. 3.

The Action of Ejectment is maintainable, if it appear by special Verdict, that any former Lease made by the Lessor, que, &c. be in Force, 1 Rep. 153. Rector of Chedington's Cale.

How Copyholder or his Leffee shall bring Ejectment by an Ejectment, there have been uncertain Opi- Copyholder nions in our Books; but the Law therein or his Leffee;

itands thus:

Lessee of a Copyholder for one Year shall maintain Ejectione Firme, in as much as his Term is warranted by the Law, by Force of the general Custom of the Realm; and it's but

but Reason, if he be ejected, that he shall have an Ejectione Firme; and it's a speedy Course for a Copyholder to have Possession of the Land against a Stranger; but in the Guardian of the Monastery of Otlery's Case cited, it was objected, That is Ejectment be maintainable by Lessee of a Copyholder (as it was adjudged in B.C.) then if the Plaintist recover, he should have an Habere fac' Possessionem, and then Copyholds should be ordered by the Common Law, 4 Rep. 26. Cr. Eliz. 676,717. Erithe's Case. Moor 709. Stoner and Gibson. Leon. p. 118.

& Leon. p. 18.

By Leffee of a Cop, holder withour Licence of the Lord.

The Lessor for Years of a Copyhold which is made without Licence of the Lord, may maintain an Ejectione Firme, because he is Leffee against all but the Lord; and the Lease is good between the Lessor and Lessee, and against all Strangers, but not against the Lord; and so in Hardres's Rep. p 330, The Leafe of a Guardian or Copyholder will maintain the Declaration in Ejectment, though void, against the Lord and Infant. And therefore Fackson and Neale's Case, in Cro. El. 394 feems not to be Law, which was; The Licence to a Copyholder was to let for Twenty one Years from Michaelmas last past, he makes a Lease for Twenty one Years, to begin at Christmas following, to the Plaintiff, who entred, and being oufted by the Defendant, brings an Ejectione Firme; the Court was of Opinion, That the Leafe not being warranted by this Licence, no Ejedione Firme lies upon it.

Copyholder makes a Lease for Three Years without Licence, this is not good for Leffee to maintain Ejed. Firme against a Stranger, per Cur', in Lady Alhfield's Case, .. Car. B. R. and in Gowen and Longburft's Cale, M. 38 & 39 El. in Scaccio'.

But in Petty and Evans's Case, in Ejectione Declaration Firme brought by the Leffee of a Copyholder, by Copyholdit is sufficient that a Count be general with- er in Ejectout Mention of the Licence; and if the Defendant plead Not guilty, then the Defendant ought to shew the Licence in Evidence; but if the Defendant plead specially (as in those Times it was usual) then the Plaintiff ought to plead the Licence certainly in the Replication, and the Time and Place when and where it was made. 2 Brownl. 40. Petty and Evans.

In Ewer and Astwick's Case it was doubted by the Court, (and so in several other Cases in former Times) Whether the Plaintiff in his Declaration ought to fet forth the Custom of Copyholder the Manor, that the Copyholder may Leafe, in his Decla-Oc. and then to shew that the Lease is war- not fet forth ranted by the Custom. But now it's fully the Custom. agreed, That the Plaintiff ought not to shew that the Lease is warranted by the Custom; but that shall come on the other Side, and so is the Practice not to declare on the Custom, Rumney and Eve's Cafe, 1 Leon. p. 100.

It has likewise been a Question, Whether Ejectione Firme one ought to be admitted before he can main- by Copyholdand Eye's Cafe if cultomary I and Eye's Cafe if cultomary I and Eye's and Eve's Case, if customary Lands do de- Presentment, scend to the younger Son by Custom, and he and where enters and leaseth it to another, who takes the not without

Profits, Admittance.

Copyholder

Mortgagee

must be ad-

Action.

Profits, and after is ejected, that he shall have an Ejectione Firme, without any Admitmittance of the Leffor, or without any Pre-Sentment that he is Heir, I. Leon. p. 101. Rum. ney and Eves, Pop. 38. Bullock and Dibler.

But a Copyholder Mortgagee must be admitted before he bring this Action, and he mitted before may bring his Bill against the Lord to be adhe brings this mitted to inable him to try the Custom, 2 Keb.

357. Towell and Cornish.

Ejectione Firme may be brought by Execu-By Executors. tors of Land let to their Testator for Years upon Ouster of the Testator for Years, per Stat. 4 Ed. 4. c. 6. which gives an Action for Goods taken out of the Possession of the Testator; the Reason is, because it is to recover the Term it self, 7 H. 4. 6. b. 2 Ventr. p. 30.

> If a Man oufts the Executors of his Leffee for Years of their Term, they may have a special Action on the Case, or they may have Ejectione Firme or Trespass, 4 Rep. 95. a.

Reg. 97. N. B. 92.

In Ejectment the Plaintiff was an Infant at the Time of the Bill purchased, and sued by Attorney where he could not make an Attorney, but ought to have fued by Guardian; per Cur', it's erroneus, and Error en fait, Cro. Fac. p. s. Rew and Long.

Deprivation in the Spiritual Court for Symony, disables from bringing Ejectment, because he can make no Lease, per H. Windbam, Bucks Lent. Affices, 1668. Dr. Crawley's

Cale.

By Infant.

By Symonist.

In Jefferson and Dawson's Case, Council The Sheriff ray'd, That Delivery of Possession might only to deli-e awarded on Elegit, but the Court denied Elegit to enathe Party having no Day to interplead; ble the Plainnd the Sheriff ought only to deliver Sei- tiff to mainare to enable the Plaintiff to maintain Eject. tain Ejectment, and the Tenant may plead on the Eject. ment. ment, or else the Tenant may be turned out unheard, and so be remediless, and per Cur' Aual Possession ought not to be delivered; at if it be, it's remediless; and yet before ntry the Plaintiff for whom the Inquisition Ejections Firme found, has Possession, and before actual be for actual htry he may have Ejectione Firme, and is not Entry on Elete to an Interesse Termini, M. 25 Car 2. git.

In some Cases, Remedy against an undue Remedy ttent may be by Ejectment; as, The In- against undue est by Practice of the Sheriff on Elegit, Extent on Eled the Defendant had Lands in A. where he git by Ejectnothing, and so extended all his Lands in as a Moiety; this is avoidable by Ejectent, as to a Moiety, and the Evidence may

That the Defendant had nothing in A. or file the Writ of Elegit, and in Ejectment Ejectment reon (which else cannot be brought) to against Tead the same; or in case of holding over, in case of ectment lies against Tenant by Elegir, if he holding over, satisfied at the extended Value, contra of a not so of a gment which is uncertain for Costs and Judgment, mages, 1 Keb. 891. Dakin and Huime. and why. Keb. 858. Lord Stamford and Hubbard.

Intruder on the King's Pollession cannot make a Leafe, whereupon the Leffee may lintain an Ejectione Firme, tho' he may re an Action of Trespass against a Stranger,

By Intiuder.

enter notwithstanding Judgment in Informat' in Intrusion. Judgment in Intrusion, what.

Stranger may but a Judgment in Information of Intrusion pro Rege binds not a Stranger, but that he may enter and bring Ejectment; if it were otherwife, this would be a Trap for any Man's Pof. fession by lawful Title; and the Judgment on Intrusion is not in the Nature of Seisin or Pos. fession, but only quod pars committatur & ca. piatur pro fine, and an Entry may be made by the King's Patentee, Hardress, p. 460. Friend and the Duke of Richmond.

If a Stranger entreth upon the King's Fermor, by fuch Entry he hath gained the Estate for Years; and if he doth make a Leafe to another, his Lessee may maintain Ejectione A Lessee may have Ejectione Firme, tho' the Reversion be in the King. So that it feems the Ejector by his Entry hath gained the Land, 2 H. 6. 6. Dyer 116. b. 2 Leon,

p. 206.

The Leffee of the King.

The Lessee of the King may bring Ejection Firme, tho' the King be not put out of the Freehold by the Words, He entred and expulsed

him, Cr. El. 331. Lee and Morris.

By Tenant in Common of one Moiety.

It's said in Leonard, 1 part 212. Lessee of Tenant in Common of one Moiety, without actual Ouster, cannot maintain Ejectione Firm against the Lessee of his Companion, as by driving out of his Cattle, &c. 1 Inft. 199. h.

It was held in Moor and Fursden's Cale, That Two Tenants in Common, Lessors, must make several Leases in Ejectment. Showre 342

7. M. covenants to stand seised to the Use of himself for Life, and after to the Uk of his Daughters, until every one of them fuccessively shall or may have levied 5001 Remainder to his eldest Son. He had Four Daughten

Entry taken away by Laple of Time for not entring.

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Daughters at the Time of his Death, and the Land was worth 100 l. per Annum; the Father died in 30 El. the eldest Son immediately entred, the eldest Daughter entred in 42 Eliz. and made the Leafe to the Plainiff; Per Cur', fhe hath overpast her Time. and cannot enter; for then she should prejudice her other Sifters, fo as they should never levy their Portions, Cr. El. 809. Blackbourn and Lassells.

A Person outlawed may bring Ejectione By a Person Firme: For tho' a Person outlawed cannot outlawed. fter an Extent prevent or avoid the King's Title by Alienation, yet the Outlawry gives no Privilege to the Possession of a Disselfor, but that the Diffeilee may enter and bring he Ejectment; for by the Outlawry the King hath only a Title to the Profits, and no nterest in the Land, Hardr. 156. Hammond's Cale vide.

If a Man oufts the Executors of his Leffee By Executors. for Years of their Term, they may have a pecial Action on the Case, or they may have n Ejectione Firme or Trespass, 4 Rep. 95. a. Reg. 97. N. B. 92.

One seised of Lands in Fee-Simple, be. The Baillets comes Bail in an Action of Debt in B. R. Lands to B. and after Issue joined, let the Land to B. Judgment is he Plaintiff; Judgment is afterwards given Principal, and gainst the Principal, and an Extent taken Extent on the apon the said leased Lands, B. the Plaintiff Lands leased, being thereupon ousted, brings this Action of B. brings Ejectione Firme, Crok. Jac. 449. Kervile and Ejectment. Brokeft.

Tenant

Where the Issue in Tail is liable to Execution on a Stat. on Sci fac' returned, and he comes not in and pleads, he shall not . bring his Ejeament.

Tenant for Life, Remainder to his Issue in Tail; Tenant for Life enters into a Stat' and dies, Conifee fues a Scire fac' against his Heir, who was Issue in Tail, and the Sheriff returns Scire feci; and upon this, Execution without any Plea pleaded by the Heir, and the Heir being ousted by the Execution, brought Ejectione: Per Cur', the Heir shall be bound by this Execution, and he has no Remedy, neither by Ejectment, Writ of Error, nor by Aud' Querela, nor by any other Way, but against the Sheriff, if he have made a faux Retorn of the Scire fac', Siderfin, p. 55. Day and Guilford.

Upon Entry a Rent and Retainer till Satisfaction for Arrear, he may upon fuch Interest quousq; maintain an Ejectment; and fo the Lord upon Seisure of 2 Copyhold till the Heir come to be admitted.

Rent granted with a Proviso, that if it be of Grantee of Arrear the Grantee may enter and retain un til he be fatisfied. This Provilo shall enure to grant a certain Estate to the Grantee when he enters for Non-payment. And tho' the Grantee by fuch Entry cannot gain a Free hold, yet he had such an Interest as he may make a Leafe of it, and his Leffee may have an Ejectment; for the Law does not give an Interest to any, but it also gives a Remedy for it; and if he have Remedy to hold such Possession, he ought to have this Action, which is the lowest Degree of gaining Polseffion. So in the Countess of Cumberlands 1 Keb. 287. in Case, Anno 1659. of Copyholds, there was Pateson's Case. a Custom, That if such Tenant who claims Tenant Right does not pay his Fine, the Lord may enter and retain the Land und he be fatisfied, and adjudged that his Let fee upon such Entry for Non-payment may maintain Ejectione Firme, Siderfin, p. 223. Femal

femot and Cowley. I Roll. 784. 2 Keb. 20. define Cafe. Cro. Jac. 511. Havergell and Hare.

Hill. 13 Fac. B. C. Rot. 868. Brown and Hagger, cited in Price and Vaughan's Case, is ill in the Point; and Trin. 14 Car. 2. Roll. SII. Eyer and Malin., Ejectment upon a cale of the Lord Byron, special Verdict bund, Sir 7. Byron seised in Fee by Indenure, grants a Rent-Charge for Life, to comnence after the Death of the Grantor; and the Rent be Arrear, that the Grantee may nter and take the Profits without Account, Il the Rent and Arrears shall be paid. lent was Arrear, and the Grantee enters and nakes a Lease to the Plaintiff; and Bridgman nd the rest (præter Browne) agreed for the Plaintiff.

It was faid in the Case of Holmes and Bayly, By Tenant at That Tenant at Will may make a Leafe for Will. Years to try a Title of Land, and so may a

Copyholder, Stiles Rep. 280. Ejectment is brought by Cestuy que Trust. By Cestuy que Now if the Trustee of the Lease be Lessor Trust.

h Ejectment, he may disclaim in Pais (if he ave not accepted the Trust) which will avoid he Plaintiff's Title at the Trial; 2 Keb. 794.

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Vendee of the Commissioners on the By a Vendee tatute of Bankrupts of Lands by Deed in of the Comdented, cannot maintain by his Lessee an missioners of Ejectione Firme before Involment of the Deed, altho' it be inrolled after the Action brought: And the Difference between this and the Case of a common Bargain and Sale,

per Stat. 27 H. 8. c. 10. of Uses, is, For there the Estate passeth by the Contract, and the Use is executed by the Statute; then comes the Act of Incolments of the same Year, and enacts, That no Estate shall pass without Incolment, and this within Six Months. But the Commissioners here have not any Estate, but only a Power which ought to be executed by the Means prescribed by the Statute, with the Circumstances there directed, which is not only by Deed indented, but incolled also; Sir Tho. Jones, p. 196. Perry and Bowers.

By Baren and Feme,

Baron and Feme Lessors in Ejectment, and do not say by Deed, yet good. 2 Rep. 61. b.

3 Rep. 216.

Note, Lessor of Tenant in Possession hath no Privilege in Ejectment, tho' he be a Lord of Parliament, unless he be Tenant in Possession himself, 1 Keb. 329. 10

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CHAP. III.

of Process in Ejectione Firme. The Original What Mistakes in the Original are Error after a Verdict, or not. Of a vicious Original. If Original in Ejectment be Summone, as it's Error. Of the Want of an Original. Of an Original taken out before the Cause of Action. Where Amendment shall be by the Paper-Of Amendments of Originals, Stat. Book. 13 Car. 2. C. 11. Of Appearance. Of common Bail. Infant, bow to appear, sue, or defend. The true Difference between Guardian and Prochein Amy. Of want of Pledges. Of Bail. Of the Stat. 12 Car. 2. C. 2. Of Bail or Error. When the Suit is in B. R. by Original, Error doth not lie upon it but in Parliament. The Form of a Precipe to an Original in B. R.

The Original thus:

R. H. Ec. Die Widd falutem. Si A. B. fecerit te securum tune one p vad Esalvos plez C. B. nuer de London Gener. Ita gisst coam Justiciariis noste apud Westind ali die) ad respondend W. I. de lito quare vi Farmis unum Messuaz ecem Acras terre E tres Acras Pasure cum ptined in D. in Comic tuo ue S. M. vid eid M. dimist ad terainum qui nondum pzeteritt intravit & ipfum a firma fua ejecit, & alia enozmia ei intulit ad grave damnum ipfing W. & contra pacem nostram ? Dom Regis nunc, &c. C. Ec.

On the Return in B. R. Quinden Pasche ubicunque.

Writ, Process.

In Ejectment upon a Demise by the Lord L. who was no Peer; yet upon No Culp' good, he being the same Person that did demise. Allen 58. Bernard's Case.

So you see the Original Writ in C. B. in Ejectment, is an Attachment, or a Pone pr vadios & salvos plegios, &c. and Summonitus in Ejectment was held to be an Error.

Summonit' for Attachment. is Error after Verdict.

In Ejectione Firme brought by Original Writ out of Chancery, the Record upon the Issue-Roll was enter'd in this Manner: ff. Simo Edulph nuper de C. fumme nit fuit ad respond Tho. A. de plin quare bi & armis, &c. And after Verdict pro Quer' it was moved, That this was a vicious Original, and not aided by any of the Statutes of Jeofails; for it appears by the Entry of it, that the Original was a Summons, where it ought to have been an Attachment, which the Court granted: But Aliter, if there upon Search there was no Original filed; be no Origi- and then per Cur', seeing there is no Original filed, it shall be intended after Verdict, that once there was a good Original,

which is now loft, and that the Plaintif's Clerk had mistaken in the Recital of it,

which

nal.

& ipfim a firma fina ejecit, & alia enozmia ei intulit ad grave damnum ipfing W. & contra pacem nostram & Dom Regis nunc, &c. C. Ec.

On the Return in B. R. Quinden Pasche ubicunque.

Writ, Process.

In Ejectment upon a Demile by the Lord L. who was no Peer; yet upon Non Culp' good, he being the same Person that did demise. Allen 58. Bernard's Case.

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which

which after Verdict is not material. Reg. Orig. 227. b. Saunders Rep. 1. p. 317. Redman and Edolph, Sider. 423, mejme Cafe, 2 Keb. 544.

me me Cale.

So in Jennings and Downes's Cafe, Error was affigned, because that it appeared by the Record that the Declaration was before the Plaintiff had any Caufe of Action: But the Councel of the other Side faid, There is a wrong Original certified, and prayed to have a new Certificare to have the true Original certified. Per Cur', Take it, for it is Original cain Affirmance of a Judgment, which ought ken our bato be favoured. But in Johns and Steyner's forethe Caufe Case the Original bore Date 24 Junii, 6 Car. of Action, is and the Ejectment is supposed 31 Januaris. Per Cur', It's Error, because the Original (upon Diminution alledged) was certified as an Original in this Action, which is between the same Parties, and of the same Land, and of the fame Term; and being taken out before the Caule of Action, it's a vicious Original, and not aided by any Statute. Stiles Rep. 352. Jenings and Downes, Cro. Car. 272, 281. Johns and Steyner.

The Original in Ejectment was Summoneas, whereas in Trespass, as this is, Summons lies not, but Attachment; this is as no Oii. ginal, and the Declaration is not here against the Defendant as one in Custody, without one of which the Court cannot hold Pleas

and Judgment was arrested. Sid. 425.

When Suit in Ejectment is in B. R. per Original, Error doth not lie upon this, but in Parliament. Id. ibid.

Original in B. R.

The Pracipe to an Original in Ejedione

Firme must be in this Manner:

Midd'ss. Si A. B. fee, Ec. tune pone C. D. nuper de J. in Com tuo gend de plito quare di E armis quatuoz Messuag cum ptid in J. que B. J. presat A. dimist ad terminum qui nondum preterit intradit E ipsum a sirma sua predix' ejecit E alia enormia ci intulit ad grave damnum ipsus A. E contra pacem nostram Oriz in ret in B. H. (Quindena Pasche) udicunque, Ec.

A. A. Attorn Quer.

It's a Rule in the Register, That in the Writ of Ejectione Firme there may not be Bona & Catalla, because that for Goods taken away a Man shall have an Exigend', and in this Writ Distress infinite. Plo. 228. b.

So was Johnson and Davies's Case. The Suit was by Original Writ, which is of one Messuage, Sixty Acres of Land, Three hundred Acres of Pasture; but per Curiam, this shall not be intended the Original upon which the Plaintist declared, but that there was another Original which warranted the Declaration, which is now imbezelled; and this Want is aided by the Statute of Jeosails, especially as this Case is, because the Writ is Teste 18 Apr' Ret' 15. Pasch, &c. This Declaration is in Trinity Term, and here is no Con.

Continuance upon this Writ. Cro. Car. 327.

Fobnson and Davies.

In Ejectione Firme the Paper-Book was Where Aright, scil. Acram Terræ, and the Bill upon mendment the File was ill, (scilicet) Clausum Terræ, and the Bill was amended by the Paper-Book; Book, or not. and the Difference is, where there is a Paper-Book in the Office of the Clerk, this being right, all shall be amended by it; but if there were not any Paper-Book, and the Bill upon the File is ill, there can be no Amendment; and in this Case the Amendment was according to the Paper-Book which was in the Hands of the Plaintiff's Attorney. Palmer 404, 405. Todman and Ward.

It was an Exception in Haines and Strowder's Case, because the Suit was by Original Writ, and the Clause (Oftensurus) was not in the Writ. Palmer 413. Haines and Strowder, Godb. 408 Case, Crouch and Haines, Case 488.

The Original was Teste the same Day Original Teste that the Ejectment was made, and adjudged the same Day good per totam Curiam. 2 Rolls Rep. 352, 129. of Ejectment.

Beaumont and Coke.

As for the Amendment of Originals in Of Amend-Ejectione Firme, there are many Cases in our ments of Ori-Books; I shall name one or two which may ginals in this be as a Guide in others.

Ex divisione for ex dimissione was amended, so Barnabiam for Barnabam, and so what appears to be the Default of the Cursitor. I Brownl, 130, I Rolls Abr. 198.

D 2 In

If the Paper-Book be perfect, tho' the Bill upon the File be not perfect, yet after Verdict.

In Ejectione Firme, if the Bill be not perfect, but Spaces left for Quantity of Land and Meadow, and after the Paper-Book given to the Party is made perfect, and the Plea-Roll, and Nist-prius Roll, but the Bill it'samendable upon the File was never perfected, and after a Verdict is given for the Plaintiff, this Imperfection of the Bill shall be amended, because the Party is not deceived by this; forasmuch as the Paper-Book which he had was perfect, and it was the Neglect of the Clerk not to amend the Bill when the Party had given him Information of the Quantity. I Rolls Abr. 207. Leefon and West.

Original in Ejectment was amended after Writ of Error brought, as divisit for dimisit.

2 Ventr. 173.

By the Stat. 13 Car. 2. c. 11. in all perfonal Actions, and in Ejectione Firme for Lands, &c. depending by original Writ, after any Issue therein joined, and also after any Judgment therein had and obtained, there shall not need to be Fifteen Days between the Teste-day, and the Day of Return of any Writ of Ven' fac', Hab' corpora jurat', Diffringas jurat', Fieri facias, or Capias ad Satisfaciend, and the Want of Fisteen Days between the Teste-day and the Day of Return of any fuch Writ, shall not be assigned for Error.

If an Original in B. R. be ill, Error upon

it lies not but in Parliament. Sid. p. 42.

Action of Ejectment, and also Battery in one Writ; and it was moved in Arrest of Judgment, because Battery was joined in Ejectment, the Damages were found several-

ly, and the Plaintiff released the Damages for the Battery, and prayed Judgment for the Ejectment, and had it. I Brownl. 225.

Bide and Snelling.

In Trin. 14 Car. 2. it was ordered by B. R. Where a Bill That in every Action of Trespass and Eject. of Middlesex ment to be brought in that Court, if the or Latitat to Lands lay in the County of Middlefex, then be brought. a Bill of Middlesex should go forth; and if the Lands lay out of the County of Middlefex, then a Writ of Latitat should be taken out against the casual Ejector, named Defendant in every fuch Action.

And that common Bail should be filed for CommonBail. fuch Defendant, before any Declaration by Bill in such Action shall be delivered to any Tenant in Possession of the Lands in such Declaration specified; and that if the Atter. ney for the Plaintiff should fail in the Performance thereof, then no Judgment shall be enter'd for the Plaintiff against the casual Ejector; nor shall the Tenant in Possession confess Lease, Entry and Ouster of the Tenants in such Declaration, mentioned at the Trial of the Issue between the Parties aforefaid.

Of Appearance.

If the Tenant in Possession do not appear Judgment in due Time after the Declaration left with against the him, and enter into the Rule for confessing casual Ejector Lease, Entry and Ouster, then upon Affida- Appearance. vit made of the Service thereof, and Notice given him to appear, upon Motion the D 3

Court will order Judgment to be enter'd up

against the casual Ejector.

In Ejectment of any other personal Action, if the Defendant do appear upon the first first Return in Hillary or Trinity Term, there can be no Imparlance without Confent, or

special Rule of Court.

Infant, how to appear.

In Actions real and mix'd against an Infant, he ought to appear by Guardian, and not by Attorney; and Judgment in Eje-Etione Firme in Banco against the Infant Defendant, upon a Verdict had against him, was reversed for this Cause. I Rolls Abr. 287. Lewis and Johns.

Ejectione Firme Was brought against Tho-

mas the Father, and J. the Son; the Father appeared by T. C. Attornat' (uum, and the faid 7. per eundem T. C. proximum amicum (uum, who was admitted per Cur' ad prosequend'. this is Error: A Guardian and Prochein Amy are distinct, and a Guardian or Prochien Amy may be admitted for the Plaintiff. And a Prochein Amy is appointed by W. I. c. 47. W. 2. c. 15. in Case of Necessity, where an Infant is to fue his Guardian, or that the Guardian will not fue for him; and therefore he is admitted to fue per Guardian or

be per Guardianum, and the Guardian ought to be admitted per Cur'. Therefore the Defendant ought always to appear by Guardian, and not by Prochein Amy; and also to admit the Defendant ad profequend', is

The Difference between Guardian and Prochein Amy.

Infant, how

to fue or de-

fend.

Prochein Amy, where he is to demand or gain; but when he is to defend a Suit in Actions real or personal, it always ought to ill, and preposterous. Cro. Jac. 640. Maby and Shepard.

Pledges.

Error of a Judgment in C. B. in Ejectione Pledges not Firme affigned in I Cro. 91, 594. in not affigned for certifying Pledges (on Diminution alledged) Error, because in a Writ of Error, for that Cause per Cur, was not pray-Omiffion of Pledges, or of one, is Error, ed. though after a Verdict; and the Defendant after in nullo est Erratum pleaded may pray Diminution, which cannot be granted but on Motion, and then only to affirm the Judg-ment; yet when the Record is come in, it may be made use of to avoid the Judgment; and because Diminution was not prayed, the Court conceived it cannot be affigned for Error. I Keb. 278, 281. Hodges's Cafe.

Rail.

In Ejectment against Two, one does not put in Bail, it is Error. 2 Rolls Abr. 46. Dennis's Cafe.

In Ejectment on Non Culp' pleaded by the Common Bail Attorney for the Defendant, Verdict was for enter'd after the Plaintiff, who had Judgment, and Error the Attorney was brought to reverse it, because no Bail was put in for the Defendant; yet the Attorney being once retained by Warrant to put in Bail, and took his Fee, and being but common Bail, though the Attorney was dead, yet the Bail was then enter'd, as of the same

was dead.

The Law of Ejectments.

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Term it ought to have been done. 3 Bulf. 181. Denham and Comber.

Stat. 13Car.2.

Trespass is within the Act of 21 Jac. which names Trespass generally, but Ejectment is not within that Act. Stat. 13 Car. 3. c. 2. orders Bail on Error in Trespass. 1 Keb. 295. Power's Case.

Note, Error without Bail is a Superfedeas in Ejectment, notwithstanding the new Act, 13 Car. 2. c. 2. it being not within the general Word [Trespass]. Id. p. 308. Luston and

Fobnfon.

When common Bail to be fied. Tr. 14 Car. 2. B. R. Ordered, That common Bail shall be filed for the Desendant, before any Declaration by Bill in such Action shall be delivered to the Tenant in Possession of the Lands in such Declaration contained; and that if the Attorney for the Plaintiff in B. R. shall fail thereof, then no Judgment for the Plaintiff shall be enter'd against the casual Ejector, nor shall the Tenant in Possession consess Lease, Entry and Ousser at the Trial.

Imparlance.

Attorney was made Lessee in Ejectment, and he would not grant an Imparlance to the Desendant, as the Course is, because he is Attorney of this Court (B. R), and so claims Privilege that the Desendant may answer him this Term, or else he will enter up Judgment against him for want of a Plea. Quere. Stiles Rep. 367.

CHAP. IV.

Against whom Ejectione Firme lies, or not; and of the casual Ejector. Of the old Way of Sealing Leafes of Ejectment by Corporations, by Baron and Feme; in what Cases now to be ufed.

Jectione Firme against one Simul cum had been ruled to be good, and so used in the Common Pleas, though heretofore it was adjudged to the contrary. Stiles Rep. 15.

It lies against Baron and Feme. Intr. 253. 9 Rep. 77. e. Peytoe's Cafe. Plo. 187.

It lies against the Ejector or Wrong Doer. be who he will.

When the Course was to seal an Eject. Who was acment to try a Title of Land, the Ejector counted an in Law was any Person that comes upon any Ejector for-Part of the Land, &c. in the Ejectment-Leafe, though it be by Chance, and with no Intent to disturb the Lessee of Possession. next after the Sealing and Delivery of the Ejectment-Lease; and such an Ejector was a good Ejector, against whom an Action of Ejectione Firme may be brought to try the Title of the Land in Question. But he that was to try a Title of Land in Ejectment, ought not to have made an Ejector of his own, again whom he might bring his Action; or to confent or agree with one to come upon the Land let in the Ejectment-Leafe, with

The new Course in Ejedments.

an Intent to make him an Ejector, and to bring his Action against him; for by that Means, the Tenant in Possession of the Land was after put out of Possession by a Writ of Habere fac' possessionem, without any Notice given to him or his Lessor of the Suit. But now the Law is otherwise, and altered by the new Way of Practice; for now it is not usual to seal any Lease of Ejectment at all in this Action, but the Plaintiff that intends to try the Title, feigns a Lease of Ejectment in his Declaration, and Ejector, and draws a Declaration against his own Ejector, who fends or delivers a Copy thereof to the Tenant in Possession, giving him Notice to appear and defend his Title, or elfe the Ejector will confess, or suffer Judgment by Default: But if the Tenant or the Leffor will defend the Title, then it is usual for them to move the Court that they may be made Ejector to defend the Title, (that is) the Tenant appears, and confents to a Rule, with the Plaintiff's Attorney, to make himfelf the Defendant in the Room of the cafual Ejector; and this the Court will grant, if he will confess Lease, Entry, and Ouster, and at the Trial stand meerly upon the Title; but if they do not at the Trial confess Lease, Entry, and Ouster, then the Judgment shall be enter'd against the casual, (viz.) the Plaintiff's own Ejector.

Note, The Court said in Addison's Case, Mod. Rep. 252. That they take no Notice judicially, that the Lessor of the Plaintiss is the Party interested, therefore they punish the Plaintiss if he release the Damages;

but

ei el but in Point of Costs they take Notice of him.

But before I proceed further, I hope it will The old Way not be tedious a little to shew how the Law of sealing and Practice was taken when Ejectment- Leafes of Leafes were sealed, and Entries to be duly Ejectment. made, and Warrants of Attorney made to deliver the Leafe upon the Land by a Corporation, Baron and Feme, &c. especially confidering that in inferior Courts the old Way of actual fealing Leafes is continued. Winch 50. I Brownl. 129. Godb. 72. Earl of Kent's Cale.

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And First. The Way to execute a Lease to try a Title, the Land being in many Mens Hands, was to enter into one of the Parcels, and leave one in that Place, and then he must go into another, and leave one there, and so of the rest; and then after he had made the last Entry there, he sealeth and delivereth the Leafe; and then those Men that were lest there must come out of the Land. But when a Title was to be tried by Ejectment, and a Lease to be executed by a Letter of Attorney, the Course was. That the Lessor do seal the Lease only, and deliver it as an Escrow, and the Letter of Attorney, and deliver the Letter of Attorney, but not the Leafe; for the Attorney mult deliver that upon the Land. And upon Ejectment brought of Land in Two Villages, as of an House and Forty Acres of Land in A and B. and a special Entry in the Land adjoining to the House, (viz.) the putting in of an Horse which was drove out of the Land by the Defendant; this was adjudged

judged a good Entry for the Land in both the Villages per totam Curiam. So of Lands in one County. Palmer 402. Argoll and Cheney.

By Corpora-

The Corporation of Mercers were feifed of the Lands in Question, in the several Possessions of two Men; and being so seised. made a Deed of Leafe to the Plaintiff, and a Letter of Attorney to deliver the Deed The Attorney enter'd and the Possession. upon the Possession of one of the Men, and there delivers the Deed, and after enters in the Possession of the other, and there doth deliver the Deed: The Question was, If it were good for the Land for which the fecond Delivery was, because one Deed cannot have two Deliveries? But the Court held, it shall be intended the first Delivery was good for all; and it shall not be intend. ed but that the two Men had Possession only as Tenants at Will to the Corporation, and then the Delivery of the Lease in one Place is good for all; and it shall not be intended they had an Estate for Years or Life, except the contrary be shewed.

By Baron and Feme.

Baron and Feme join in a Lease by Indenture to B. rendring Rent for Years, and make a Letter of Attorney to seal and deliver the Lease upon the Land, which is done B. brought Ejectment, and declares of a Demise made by the Baron and Feme; and upon Evidence to the Jury it was ruled per Cur, That the Lease will not maintain the Declaration; for Feme-Covert cannot make a Letter of Attorney to deliver a Lease of her Land, but the Warrant of At-

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not r a Atney torney is meerly void; fo that this only is a Leafe of the Husband, which is not maintained by the Declaration. But Hopkins's Case in Cro. Car. 165. is against this, where the Plaintiff declared of a Leafe made by Baron and Feme. On Not guilty, it appear'd on the Evidence, that the Leafe was fealed and subscribed by them both, and a Letter of Attorney made by them to deliver it upon the Land. Per Cur', It's a good Letter of Attorney by them both, and the Leafe well delivered, and it is a Leafe of them both during the Husband's Life. Telv. Wilson and Rich, 2 Brownl. 248. Plomer's Case, Cro. Car. 165. Hopkin's Case, 2 Leonard 200.

CHAP

CHAP. V.

The new Practice in Ejectments. Of delivering Copies of Declarations. Ejectment in inferior Courts. Of confessing Lease, Entry, and Ou. ster, and Rules of Court relating thereunto. Of Refulal to confess Lease, Entry, and Ouster, and the Consequence. A Note in Writing of the Tenants in Possession. Of taxing Costs on Refusal to consess Lease, Entry and Ouster. Of bow much the Defendant shall confess Lease, Entry and Ouster. Ejectment on Nonpayment of Rent, Lease defective. In what Cases there must be an actual Entry, and where it is supplied by confessing Lease, Entry and Ouster. Where the Defendant shall not be compelled to deliver a Note in Writing of what is in his Possession. Rules concerning one's being made Defendant. If a Parliament-Man may be admitted Defendant of the Ejectment Lease. One may lay as many Demises in a Declaration in Ejectment as he please.

HOW necessary the Knowledge of this Practice is to one who would manage his Client's Cause with Discretion and Success, is sufficiently apparent, and needs no further Recommendation.

The new Practice of Ejectments.

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Note, By the new Way of Practice, it's not usual to seal any Lease of Ejectment at all in any

any Action of Trespass and Ejectment, except only where an House or Land is empty. and that Person who was last in Possession is run away, and you cannot find any fit Perfon to deliver the Declaration to, then you must proceed the old Way, by fealing a Leafe upon the Ground; and give Rules to plead, (but you cannot have Judgment against the casual Ejector without a Motion of Court for that Purpole, after the Rules of Pleading are out) and except in case of Inferior

Corporations.

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And by this new Practice, a Copy of the Ofdelivering Declaration in Ejectment is to be delivered Copies of Deto the Tenant in Possession or his Wife, clarations. (Q. If Son or Daughter, or Servant, be good, Vide Infra;) and upon such Copy there must be an Indorsement or Subscription in English, acquainting the Tenant what it is, and for what; which Indorfement or Subscription must be read to the Tenant, or his Wife, by him who delivers the same, at the Time of the Delivery thereof. If the Tenant doth not appear the Beginning of the next Term, then upon Affidavit made of the Delivery of a Copy of the Declaration thereunto annexed unto the Tenant or his Wife, and reading of fuch Indorfement or Subscription, or acquainting them with the Contents thereof, the Court will make a Rule for the Tenant to appear and plead by a certain Day; at which Time, if the Tenant appears, he must by his Attorney file Common Bail, and draw up a Rule to confess Leafe, Entry and Ouster, and leave it at a Judge's Chamber, and give Notice thereof

to the Plaintiff's Attorney, to proceed if he thinks fit. But if the Tenant in Possession doth not appear by the Time appointed by the Court, Judgment will be enter'd up against the casual Ejector by Default, and the Tenant in Possession will be turned out of his Possession by Habere fac' Possessionem upon such Judgment.

The Court will not suffer the Plaintiff to amend his Declaration in Ejectment after Delivery, and before Plea pleaded; but the Plaintiff must stand and fall by his Declaration as it is, or deliver a new Declaration.

It is sufficient in Ejectment brought to try the Title of the Land, if the Tenant in Possession of the Land have a Copy of the Declaration delivered to him or his Wife, tho he be an Under-Tenant, and altho no Notice be given to the proper Tenant, or to the Owner of the Land. Hill. 23 Car. 2. B. R.

To deliver a Copy of a Declaration to a Servant is sufficient by Dolben, but by Holi it is not; but to the Wife it was good. There is a Difference between this and a Subpana, which may be delivered to a Servant; the Reason is, because the Law is tender in case of Possession. I. W. & M.,

If Trustee of a Lease be Lessor in Ejectment, his Disclaimer in Pais will avoid the

Plaintiff's Title. 2 Keb. 794.

Ejectment in inferior Courts. It must be observed, (as was adjudged in the Mayor of Bristol's Case) that there, or in any other inferior Court, they cannot make Rules to confess Lease, Entry and Ouster, as in the Courts of Westminster, but they must actually

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actually feal the Leafe, as at Common Law. And fo it was in Sherman and Luck's Cale, where it was moved, That the Defendant, who by Habeas Corpus had removed an Ejectment out of the Sheriff's Court, might confent to a Rule of Court, that he should confels Leafe, Entry, and Ouster; but the Court refuled, the Defendant not being bound by the Rule below, because they cannot proceed by Way of delivering Declarations to the Tenants in Possession, but as at Common Law by actual Leafe fealed: And by Hyde, all the Trials below; Trials below are tried in the cafual Ejector's how. Name by him that is Tenant in Polleffion, to avoid Charge. P. 16 Car. 2. B. R. Mic. 16 Car. 2. B. R.

Where the Freeholds are several, and one Where the Desendant gives a Note of what is in his Freeholds are Possession, the Plaintiff must sever his Action, Plaintiff must else the Defendant might lose his Costs, for fever his which on Severance he would have legal Action. Remedy. And here is no Inconvenience, because the Plaintiff may take Judgment against his own Ejector for the rest; and the Defendant shall not confess Leafe, Entry and The Defen-Oufter of all, but only of to much as is in dant not to his own Possession, which is the only Way confess Leafe, Entry, and to fave his Costs. And Medlicot's Cafe was, Ouster, for where the Plaintiff's Title is only by the any morethan Demise of A. and the Desendant's several, is in his own the Plaintiff offered to Secure Costs severally Possession. to all; but he was ordered by the Court to deliver several Declarations, that none may detend for more than is in his own Polleffion, elle the Plaintiff might clap in an Acre of his own to fave Cofts: And Agree-

ments

ments of Parties are no Guide to Rules, but would make the Court but arbitrary; and this Rules is no Hindrance of Trials at Bar. where many Defendants have but the same Trin, 21 Car. 2. B. R. Medlicot's Title.

Cafe.

new Courfe of leaving Declarations.

In Eiectment the Ouster was consessed of a Third Part, of a Fourth Part, of a Fifth Part, in Five Parts to be divided; which by The Inconve- Hide is very inconvenient, and crept in fince nience of the the new Rule of leaving Declarations, the Lands being in feveral Places distinct from each other, and may be held by feveral Titles, which could never be, had the old Course of actual Ejectment continued; but on Suggestion that the Title was but one, and one Plaintiff, and one Defendant, it was admitted. Mich. 15 Car. 2. B. R. Cole and Skinner.

Motion for Attachment againft Attorney, for procuring one to be turned of quiet Pof. feffion.

Secundo Anne, in Holderstaff and Saunders's Cafe, Serjeant Hooper moved for an Attachment against an Attorney, and some more, who had got one in quiet Possession turned out, thus: He got one to come upon the Land, who assumed the Name of the Tenant in Possession, and owned himself to be the Man. and got the common Affidavit of Service to him by the borrowed Name, as Tenant in Possession, having delivered a Declaration to him before, and thereupon got Judgment against the casual Ejector, and turned the Tenant, who was wholly ignorant of all this, out of Possession. Upon Affidavit of this Matter, all the Accomplices were ordered to attend; for though the Court looked upon it as a very great Offence, they would

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not at first Dash grant an Attachment, but faid, that it being in a criminal Matter if Endeavours were used to serve them with the Rule, and they could not be found upon Affidavit of that Matter, they would grant an Attachment without requiring personal Service.

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Formerly, after a Nonfuit at the Affize, for want of confessing Lease, Entry, and Ouster, the Plaintiff's Attorney immediately made out a Writ of Possession: But the Practice is fince altered, so that now it cannot be done till after the Postea comes in at the Day in Bank; for it may be, there was no due Notice of Trial given, or there may be some good Reason to set aside the Nonsuit. Per Mr. Lilly.

In Ejectment where there are divers Defendants, who are to confess Lease, Entry, and Ouster, if one doth not appear at the Trial, the Plaintiff cannot proceed against the rest, but must be nonsuited. I Ventr.

In Ejectment the Plaintiff shewed Copy of In what Case Four Acres to fave Costs, the Title being the Court will on Will or no Will but not being able to give Leave to on Will or no Will; but not being able to retract the geprove where particularly, the Court gave neral Confes-Leave to the Defendant that claimed by the sion of Lease, Will, to retract the general Confession of Entry, and Lease, Entry, and Ouster, as to this, and to Ouster. have Judgment against the casual Ejector. M. 27 Car. B. R. Hyde and Preston.

If the Defendant refuse to confess Lease, Entry, and Ouster, the Rules are thus:

Where the Defendant was by Rule of

Court at the Trial (which was to be at the

Of the Defendant's Refufal to confess and Ouster.

Bar) to appear and confess Lease, Entry, and Leafe, Entry, Ouster, and to stand upon the Title only, yet at the Trial he would not appear; upon which the Plaintiff was nonfuit, and yet Judgment was for the Plaintiff upon the Rule, and he was ordered to pay the Iu-

And in Davies's Case, 12 Car. 2. B. R. H. desired to be made Defendant, confessing Leafe, Entry, and Ouster, and at the Trial

resolved so to do; but the Court denied To pay no that he should pay Costs, because thereby Cofts. the Plaintiff hath recovered, and so hath

the Fruit of his Suit. But in Williams and Hall's Case, on Trial at Bar the Defendants refused to confess Lease, Entry, and Ouster.

Per quod the Plaintiff was nonfuited; and it was moved, that in regard the Default was the Defendant's, that the Plaintiff might have

Attachment against the Defendant, according to the Course of the Common-Bench, which the Court granted. So upon a Judgment against his own Ejector in Default of

confessing Lease, Entry, and Ouster, without a special Rule, no Costs shall be paid by H. the Tenant in Possession, that made

this Default, because the Plaintiff hath Benefit of his Suit, (viz.) Judgment against the

Ejector, whereby he may recover Possession. Stiles, p. 425. 13 Car. 2. B. R. 15 Car. 2.

B. R. 1 Keb. 242.

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In Trin. 15 Car. 2. it was ordered by the Court, that in every Action of Trespass and Ejectment, where by Rule of Court the Defendant ought to confess Lease, Entry, and Ouster, for so much of the Premisses in the Declaration mentioned as is in the Possession of the said Defendant, or his Under-Tenants, the said Defendant's Attorney should forthwith deliver to the Plaintiff's Attorney A Note in a Note in Writing of the Tenements fo be. Writing of ing in the Possession of the said Defendant, ments in Posor his Under-Tenants.

If the Defendant doth not at Nisi prius confess Lease, Entry, and Ouster, according to the Rule, then the Plaintiff mult be nonfuit; but there must not be any Costs taxed against Of taxing him, but the Rule for confessing Lease, En- Costs upon try, and Ouster, must be carried to the Secon- Refutal to dary, who taxes Costs upon it, which must confess Lease, be demanded for the Defendant; and if the oc. fame are not paid, the Court will, upon an Affidavit and a Motion, grant an Attachment against the Defendant.

The Form of the Rule of confessing Lease, Entry, and Ouster in B. R. & B. C. Vide infra.

fellion.

Of the Effect of an Entry according to the Rule. and where it will supply an actual Ouster, and where not.

Where confessing Lease, Entry, and Ouster, will Supply an or not.

Ejectment was brought by Devisee of a Rent, on Condition, that if a Legacy be not paid yearly, &c. that it shall be lawful for the Devisee to enter; and after the Deactual Ouster, mand made of the Rent, this Action was brought, and the Leafe, Entry, and Oufter, was confessed. Per Windham, this is only of an Entry sufficient to make the Lease that entitles to the Action, not of an Entry that gives Title to the Land; and for Non-proving of an actual Entry, the Plaintiff was nonfuited; but otherwise in case of a Lease rendring Rent, to be void by Re-entry by Non-payment. In the Ejectment there was a Rule for confessing Lease, Entry, and Ouster, and the Question was, Whether this be sufficient without Proof of actual Entry? Per Hales, Chief Justice, the Confession is sufficient, else in every Case of Disseisin, &c. the Entry must be proved; but in Assignment of Assignee of Lessee, such Confession doth not avoid the Affignment, but that must be proved; and this is as actual Leafe on the Land, which cannot be without Entry. And lo is 1 Ventr. 248. Anonym. The Lessor of the Plaintiff had a Title to enter for a Condition broken for Non-payment of Rent; Leale, Entry and Ouster was confessed, and the Court was moved, that in regard that the Lessor having such a special Title, and no

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no Estate till Entry, whether such an Entry shall be supplied by the general Confession. or that there should be an actual Entry: And it was held, it should be supplied by the general Confession. But by Hales, it A. lets to B. and B. to C. to try the Title, the confessing of Lease, Entry and Ouster, extends only to the Leafe made to C. and not to that made to B. P. 26 Car. 2. B. R. Abbot and Sorrel's Case, M. 25 Car. 2. B. R. Wither and Gibson, I Ventr. 248. Anonym.

In Okely and Norton's Cale, M. 22 Car. 2. B. R. Judgment was prayed for not confessing Lease, Entry, and actual Ouster, by one Coparcener against another. Per Cur', On the former Rule to confels Leale, Entry and Oufter generally, actual Oufter need not be confessed, and Judgment was against the casual Ejector. The Rule to confess Lease, The Rule to Entry, and Ouster, does not extend to con- confess Lease, fess actual Entry upon a Lease, which is the Entry, and Ouster, does Title: But the Court said, an Entry shall not extend to be intended until the contrary be proved of confess actual the other Side. The Case was upon Evi- Entry upon a dence to a Jury at the Bar. The Plaintiff's Leafe which Title was a Lease for Five thousand Years, is the Title. which Leafe was fealed and delivered at London; and the Council for the Defendant would put the Plaintiff to prove an actual Entry by Force of this Leale; for it was agreed, that the Rule to confess Lease, Entry and Ouster, doth not extend to it. But per Cur', It shall be intended that he enter'd, until

the contrary be proved on the other Side.

M. 22 Car. 2. Okely and Norton, Sid. p. 223.

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Langborn and Merry.

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Eiechment on of Rent.

In Chivers and Drurye's Cafe, per Holt, Non-payment Chief Juffice, if the Lessee break his Condition by Non-payment of Rent, and the Leffor makes an actual Entry, and so avoids the Leafe, and then brings Ejectment, &c. we cannot fet aside his Ejectment on the Lesfee's paying his Rent; but if the Leffor doth not make an actual Entry, but brings Ejectment, we will not compel the Defendant to confess Lease, Entry, and Ouster, if he will bring the Rent into Court; for in such Cafe we can take Care that the Lessor shall not have Advantage of our Rule.

If the Leafe be defective, we can give no Judgment; and the Rule of Court doth not bind the Defendant to confess the Leafe otherwise than you have made it.

Rep. 243. Theoball's Cafe.

Upon a Trial in Ejectment, the Title of the Plaintiff's Leffor appeared to be by a Remainder, limited to him for Life upon divers other Estates, and that there was a Fine and Proclamation; but he, within the Five Years after his Title accrued, fent Two Perfons to deliver Declarations upon the Land, as the usual Cause was upon Ejectments brought. Per Cur', This is no Entry of Claim to avoid the Fine, he having given no express Authority to that Purpole; and the Confession of Lease, Entry and Ouster, shall not prejudice him in this Respect. M. 25 Car. B. R. Clark and Phillips.

Leafe defeceive.

As for one's being made Defendant, the Rules are thus:

He that desireth to be made Desendant The Desenin Ejectment for as much as is in his Posses dant to give a sion, or of his Under Tenant, must give a Note of what Note to the Attorney of the Plaintiff in fession. Writing of what the Particulars are, of which he is in Possession, or his Under-Tenant, to prevent Delay at the Affizes. Trin.

15 Car. 2. fo ordered.

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Ejectment for Two Meffuages, Two Gar- The Court dens, and 70 Acres of Land, 15 of Mea-would not dow, &c. in M. The Plaintiff delivered Plaintiff to Two Declarations to Two Tenants only; deliver a Note and as to the Lands in their Possession, the in Writing Defendant enter'd into the common Rule; what Lands but because he had made several small Pur- the Claimed in the Perish and the Plaintiff claim'd the Declarachases in that Parish, and the Plaintiff claim'd tion, being 20 Acres lately granted to him by Leafe from general. the Bishop of Gloucester, therefore he moved, that the Plaintiff might give a Note in Writing before the first Day of the next Term, what Lands in particular he claimed, and where fuch Lands lie, and in whole Polleffion, &c. or otherwise that he might not proceed to a Trial at the next Affizes; for the Defendant not knowing what Lands the Plaintiff would claim, could not tell what Purchase-Deeds to produce at the Trial. Sed non atlocatur. 4 Mod. 214. Gwm verfas Pic.

If the Defendant in Ejectment will not plead according to the Rules of the Court, there must be Affidavit made of the sufficient serving of the Declaration, and then Council must move upon that Ejectment to have Judgment against their own casual Ejector, which the Court will grant, and make a Rule, that unless the Tenant in Possession will appear, and become Defendant within such Time as the Court shall think sit, that Judgment be enter'd against the casual Ejector.

He that desireth to be made Desendant in Ejectment for so much as is in his Possession, must give a Note what the Particulars are of which he is in Possession, to prevent De-

lay at the Affizes. 1 Keb. 677.

In Ejectment it was moved by Serjeant Tremaine, that a Parliament-Man, Lessor of the Tenant in Possession, might be admitted Desendant, lest the Desault of the Tenant might prejudice him; but the Court denied it, having advised with the Prothonotaries, who faid, that no privileged Person could be so admitted: Then it was prayed that the Lord Halifax, being Guardian to the Earl of Plimouth, might be admitted Defendant, left the Tenant in Possession should make Default; but the Court denied it, for that the Lord Halifax being a Parliament-Man, might infift on his Privilege. But they agreed, that the Lord Halifax should name some other Person of Note to be Defendant, who accordingly nominated one Berkley, one of the Tenants in Possession, and he was allowed per Curt. and a Trial at Bar for the next Term. If

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If in Ejectment a Declaration be deliver'd, and J. S. fecundum regulam Curie, be admitted Defendant, and enters his Appearance with the Philizer; if then he leaves his Plea Not guilty in the proper Office of the Declaration, with a Certificate of his Appearance from the Philizer, and then he must strike the casual Ejector out of the Declaration, and put in the Defendant; in such Case the Plaintiff cannot sign Judgment against the casual Ejector, neither on pleading such Admittance is the Plaintiff bound to give a new Declaration.

Two Defendants.

No Person shall be admitted to be Desendant in Ejectment with the Tenant in Possession, but he that hath been in Possession, or receives the Rent. 5 W. & M. B. R.

If there be two Ejectors named in one Ejectione Firme, one of them may be found guilty of the Trespass and Ejectment, and the other, as the Case may fall out, shall be acquitted; and yet the Action is well brought, because there is a Trespass and Ejectment found against one of the Desendants. But now by Stat. 8 & 9 W. z. c. 10. unless the Judge, before whom the Cause was tried, certifies immediately after the Trial in open Court, that the Plaintiss had a reasonable Cause for the making such Person Desendant in the Action, the Desendant shall have his Costs as if a Verdict had been given against the Plaintiss.

By Pinsent in B. C. if one move that the Title of the Land do belong to him, and that the Plaintiff hath made an Ejector of his own, and therefore prays, that giving Security to the Ejector to fave him harmlefs, he may defend the Title, the Court will grant it, but will not compel the Plaintiff to confess Lease, Entry, and Ouster, except he will be Ejector himself. is not fo in the Court of King's Bench, for there in both Cases they will compel him to confess Lease, Entry, and Ouster. Stiles Rep. 368.

Difference between the Course in the King's-Bench and Common Pleas.

He that is made Defendant in Ejectment not to be charged with Actions by the By.

The Course of the Court is, That one that cometh in to be made Defendant in Ejectment, upon his Prayer confessing Leafe, Entry, and Oufter, shall not be charged with any Actions by the By; because he comes in without Process or Arrest, only to defend the Title.

Motion to al-

In Ejectment after Declaration, and before ter the Plain- Plea, he which had the Title moved the tiff, and why. Court for to alter the Plaintiff, because he was to give Evidence; and the Court agreed to it, that he should alter the Plaintiff paying Costs, and giving Security for new Costs: And they may alter the Plaintiff in this Action upon the fame Reason that they may alter the Defendant, which is usually done. I Siderf. p. 24.

Note, After Default (in Ejectment), the After Default in Ejectment Defendant may confess Lease, Entry, and the Defendant Ouster, and may give Evidence, and have may confess all Advantages (except Challenges), and if Leafe, Entry, the Plaintiff becomes nonfuir, any one for

the Defendant may pray it to be recorded.

Trials per Pais, 195.

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The Defendant was by Rule of Court at the Trial, which was to be at the Bar, to appear and confess Lease, Entry, and Ouster, and to stand upon the Trial only; yet at the Trial he would not appear, upon which the Plaintiff was nonfuit, and yet the Judgment was for the Plaintiff upon the Rule, and he was advised to pay the Jury. Stiles Rep. 425. Harvey and Mountney.

Of the Ejectment-Lease.

You may observe what before is faid. That it's a feigned Leafe, and by the new Rule is to be confessed; and it's laid sometimes for Three Years, or Five, or Seven Years. And it is good to lay it for longer than Three or Five Years; for I have known by Injunctions and other Dilatories it hath worn Five Years out, and then the Plaintiff cannot have Judgment without beginning de novo. And therefore Pemble and Sterne's Enlargement Case being adjourned into the Exchequer- of the Lease Chamber, the Court order'd an Enlargement for a longer Term by the of the Lease or Term from Seven to Twelve Court. Years, which they may do by Law, no Leafe ever being actually fealed, but declared on, Trin. 21 Car. 2. Pemble and confented to. and Sterne's Cale.

The Leafe was 24 Sept. babend', from Mi. chaelmas next, virtute cujus the Plaintiff enter'd, and faid not when. Per Cur', It shall be intended on the Day after Michaelmas; Virente cujus but if it had been, Virtute cujus he enter'd he enter'd.

eod' 24 Day of Sept. it had been ill. Pasch. 26 Car. 2. Hallam and Scot.

Lease of all Warrants, Ejectment of Part.

Ejectment by Leffee of Leffee of the whole by the Daughters and Heirs of Sir Peter Vanlore, which was made by reason of the Uncertainty of the Part claimed by the

Plaintiff. 2 Keb. 700.

You may lay as many Demises in a Declaration in Ejectment as you please, and if the Plaintiff recovers upon one of them, it's sufficient pro tanto; as if for Lands in Gavelkind the Plaintiff declares, That A. B. C. D. &c. 10 Dec. &c. did demise to him 100 Acres of Land, babend, &c. and also that C.D. demised to him one Sixth Part of the said 100 Acres of Land, babend', Oc. and also that the said E.F. demised to him one Third Part, and also one Sixth Part of the said 100 Acres of Land, babend, &c. by Vertue of which feveral Demises he enter'd, and was possessed. 2 Lev. 117.

Lease made to try a Title in Ejectment. is not within the Statute of buying of Titles. if it be not made to great Men, but to a Servant of him that hath the Inheritance. 2 Brown-

low 123. 1 Inft. 369. a.

Note, Ejectment may be brought upon a Leafe made in the same Term. I Ventris.

Upon a Leafe made by Husbands and their Wives for the Trial of a Title, and the same executed by Letter of Attorney; the Leafe and Letter of Attorney were only fealed by the Husbands, and so not good. Per Cur', The Wives ought to have fealed also, and the Entry of the Attorney ought to have been

How the Lease to be made where there are feveral Parts uncertain claimed.

Leafe to try Title, no Maintenance. been in all their Names. This by the old Course. 2 Roll. 2. 13.

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y, id In Sheirton's Case, 32 Eliz. resolved, that the Lessor may maintain the Suit of his Lessee in Ejectment. Cited by Mr. Thomas Crew in his Argument of Banister and Eyre's Case.

Ejectione Firme counts in a Demise for Years generally, and gives in Evidence an Indenture: It was good by common Practice.

EHAP.

CHAP. VI.

Of Declarations. Of what Things an Ejectione Firme may be brought or not, and how. De Domo, De Tenement', De Burgo, De Cubiculo, De Repositorio, De Capella, De Coquina, De Cottagio, De Pomario, De Molendinis, De peria Terræ, De Manerio, De Crosto, De I Clauso, De 2 Roods of Land, De Parcela Terræ, De duabus Acris fundi, Angl' Hop-ground; De Decem acris Pifar', De 300 acris Wast, De 1 tonsura, De Coabucine, De Rivulo seu aquæ cursu, De Profit apprend', De Libera Piscaria, De 100 Acres of Bog, De 500 Acres of Mountain in Ireland, De 40 Acris Bosci & 20 Subbosci, De Decimis, De Jampnis & Bruera, De 1 Virgata Terræ, De Pannagio, De Herbagio, De libera Warrena, De Capella, De Carrucat' Terræ, De Light bouse, De 600 Acres of Fen Marsh, De quadam Fabrica, Angl' a Smith's Shop; De Barony, De Dominio, De Commote, De Salino, De Ling ground and Heath, De Rectora pro Proof of Part of an House, De Mineris Carbonn'; De quodam Loco, vocat' le Vestry. Ejectment, and declares of Two several Leases of the same Thing, by several Persons: De 6th Part of a Messuage in Two Parishes. Where the Evidence doth not maintain the Issue; of Common of Pasture; of a Fair. De Curtilagio. Of a Church. Of an House in Australi vic. Anglice the High-Street in Winchester. General Rules of Declarations

rations in Ejectment. Variance between the Issue Roll and the Imparlance Roll. Of Entry and Ejectment Supposed before the Commencement of the Lease: The Entry supposed after the Postea virture cujus, How taken and expounded where the Demise is laid before the Time in the Declaration. Habend' a die datus expounded. When the Leafe shall be in. tended to be delivered on the Day of the Demile, and not of the Date. Of the Postea scilicet. The Manner of declaring by Coheirs, by Tenants in Common, by Joint-tenants, by Baron and Feme, by a Corporation. Upon a Leafe by Tenant for Life, and bim in Remainder. Upon a Lease by Commissioners of Bankrupts, by Copyholder, by Administrator.

THE new Way of Tryals in Ejectment by Confession of Lease, Entry and Ouster, and standing only upon the Title, make fome Persons conceive, That Cases or Resolutions about Declarations in Ejectments (whose Form is now generally settled) to be useless and antiquated. And in Truth they are so in a great Measure; and yet notwithstanding there are several good Rules and Refolutions, as well relating to Matters of Law as Practice, and Forms, even fince the faid new Method has been taken up, both as to what Things an Ejectment may be brought or not, and Delivery, Entry, Variance, and Amendments of Declarations; as also how Declarations ought to be, when Coparceners, Jointenants, Corporations, Baron and Feme, Tenants in Common, Administrators, and the like, are concerned. And yet, even those

those former Cases and Resolutions as to the Commencement of Leases and Demises on which the Declaration is, and the Dates and precise Times of Entry and Ouster, deserve well to be considered; not only as so many curious Points of Law therein argued, of which it's not to be thought a general Lawyer would be ignorant; but because in Inserior Courts the old Way of delivering Declarations

is and must be used.

I shall therefore in the First Place cite some of the principal Cases touching the Manner of declaring in former Times, as to the Dates and Commencement of Demises, &c. and then come to those Considerations and Rules which are of present Use, both as to Delivery, Entry, Forms, and the like, in which many Practisers may not be well informed, and which are sounded upon late Resolutions. But first, I shall shew how Declarations are to be laid in respect of the Matter and Things for which the Ejectment is brought; concerning which, the Cases in our Books are very frequent, and very useful to be known.

Note, Quod nunc is well enough, because the Ejectment is positive. Showre 342.

Of what Things an Ejectione Firme may be brought, and what not.

De Dame

Ejectment lies not de una Domo, because it may be a Dove-house or Dwelling house; but Cro. fac. 654. in Royston's Case contra, That it lies de Domo, as well as Wast de Domibus, but it lies de Domo vocai Holts, 2 Roll. Rep. 487,

482

482. Warren's Cafe. Cr. Fac. vid. in Pafch.

1650. Fry and Pooly. Hard. 76.

Ejectment lies not de uno Tenemento. Eject- De Tenemento. ment was brought of an House, and the Moiety of a Tenement; it lies not for the Moiety of a Tenement; Verdict was (in this Case) given for the Plaintiff, and intire Damages. The Plaintiff may well release his Damages Where the as to the Tenement, and take his Judgment Plaintiff may for the House, and then it shall not be Error, by Release of 2 Bulft. 28. Rothowick and Chappell.

Ejectment lies de uno Burgo, Hardr. 123. De Bargo.

Danver's Cafe.

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Ejectment de uno Cubiculo, is good; as it was De Cubiculo. laid, it was unius Cubiculi, per nomen unius Cubiculi being in such an House in the middle Story of the faid House. The word Cubiculum is a more apt Word than Camera. Ejectment de una Rooma, it was said, had been adjudged good in B. R. So a Pracipe lies of an Upper-Chamber. 3 Leon. p. 210. 2 Rolls Rep. 48.

Ejectment de uno Repositorio, Judgment was De Repositorio. reversed, because it was uncertain, it not being expounded in English, it was intended a Ware-house, W. Fones 454. Sprig's Case. Cro.

Car. 251. mesme Case.

Ejectment de uno Messuagio sive Repositorio, was held ill, because of the Uncertainty in the one Case, and because of the various Signification of the Word in the other Cale. 4 Mod. 136.

It is not formal to bring Ejectment de und De Capella. Capella, but it ought to be by the Name of a

Messuage or House. 11 Rep. 25. b.

Part.

De septem Messungiis sive Tei ementis. Ejectment de septem Messuagiis sive Tenementis; it's ill after a Verdict for the Uncertainty, Cro. El. 146.

De uno Messuagio sive Tenemento vocat'.

Ejectment de uno Messuagio sive Tenemento vocat' the Black-Swan, is good per Twisden; for the last Words ascertain it. Had the Verdict been general for the Plaintiff for the Messuages, and Non Culp' for the Tenements, it had been good: And in this Case the Plaintiff cannot aid himself by releasing of Part, as it might be, had there been Lands in the Declaration. De Messuagio sive Tenemento, is ill after a Verdict; but if the Judge will allow the Jury to find for the Plaintiff for the Messuage, and for the Residue for the Desendant, it had been good; but the Plaintiff may not aid him-Tell by Release. Siderf. 295. Burbury and Yeo. In Hexban and Conver's Case, 2 Mod. Ejectment will not lie of a Tenement, it's of an uncertain Signification, it may be an Advowson, House or Land; but it is good in Dower, and with a Vocat' the Black-Savan.

De Coquina.

by Bill in B. R. tho' Coke said it lies by Writ too, and the Law is all one. I Roll. Rep. 55.

De Cottagio.

It was adjudged in Stiles Rep. 215. That Ejestment doth lie of a Cottage, because the Description of a Thing by that Name is sufficient and certain enough to shew the Sheriff of what to deliver the Possession; but a Recovery lies not of a Cottage. Stiles p. 258. Hammond and Ireland. Cro, El. 818. Hill and Gibs.

De Pomario.

Ejectione Firme lies de Pomario, and de Domo, for they are certain enough to give Possession, tho' a Precipe lies not of it; and many Things are recovered in Ejectment, which are not named

in

in the Register, as Hop yard, &c. Cro. Jac. 654. Royston and Eccleston. Palmer 337. mesme Case. Cro. El. p. 854. Wright and Wheatly.

Ejectione Firme de quatuor Molendinis, with- De Molendinis, out expressing whether they are Wind-mills or Water-mills, yet good. Mod. Rep. 19. Fitz. Gerard's Cale.

In Palmer and Humphrey's Case it was ad- De pecia Terra. judged, That Ejectment lies De pecia terra; but it was after reversed in the Exchequer-Chamber. Cro. El. 422. Palmer and Humphreys.

And a Declaration De una pecia terræ continen' ducentas & unam Acram sive plus sive minus jacen' inter terras, &c. this was adjudged ill after a Verdict, and Nil cap' per Billam entred. A So continen' dimidiam acram terræ vocat'. It was said in Hancock and Pryn's Case, Ejectment of a Close of Land, or de pecia terræ containing so many Acres, had been good, W. Jones, p. 400. Savil 176. Hardr. 57.

Minching Furlong; una pecia terræ vocat' Minching Furlong; una pecia terræ vocat' Great Ashbrook; una Gardino vocat' Mathin-Garden, que omnes & singulæ parcellæ terræ jacen' in Paroch' de W. Upon Plea, Not guilty, Virdict for the Plaintiss, and Judgment Accord', Tr. 36 El. B. R. Rot. 815. But this Judgment was reversed in the Exchequer-Chamber, because pecia Terræ is not a sufficient Certainty for the Sheriff to make Execution, and because there is not any Place expressed in which the Garden lies, for [que omnes & singulæ parcellæ terræ] reser to the Land, and not to the Garden.

De Manerio.

Ejectione Firme cannot be of a Manor, for that there cannot be an Ejectment of the Services; but if they express surther a Quantity of Acres, it is sufficient, and it lies of a Manor or the Moiety of a Manor, if the Attornment of Tenants can be proved; and there is none that brings Ejectment of a Manor, but they also add the Acres that contain it, to the end that if they prove it not a Manor, they may recover according to the Acres. Vide infra. Hetley 80. Norris and Isham. And p. 146. Warden's Case.

De Crofto.

It was doubted by Rolls and the Court, if an Ejectment lies de Crofto; therefore the Plaintiff moved for a special Judgment for the rest of the Land contained in the Declaration, and released the Damages as to the Crost, and had it; but afterwards in Meeres and French's Case it was agreed, That Ejectione Firme lies of a Crost, and Dower and Assise will lie of a Crost, because it is put in View of the Recognitors, tho' a Formedon nor Pracipe will lie of it, but 2 Car. p. Rot. 301. Holmes and Wingreve, de Crosto is ill in Ejectment, tho' good in Assise. Rolls Rep. p. 30.

De uno Claufo.

De tribus Roods of Land. Ejectment de uno Clauso, without saying how many Acres, is ill. A Man makes a Lease of a Garden containing Three Roods of Land, Lessee is ousted and brings Ejectment; the Justices differed in Opinion, whether it were good, or not; but all agreed the best Order of Pleading to be, to declare, That he was ejected of a Garden containing Three Roods of Land, Godb. p. 6,

The Law of Ejenments.

Ejectment doth not lie of a Close, altho' it had a certain Name; but it ought to be of fo many Acres: And altho' it fays, a Close containing Three Acres, yet it's not good if it doth not shew of what Nature the Acres are. as Meadow, Pasture, Wood, &c. and the Certainty ought to be in the Court in this Action. 11 Rep. 55. a. b. but the Contrary to this hath been adjudged fince. Eject. Firme was brought of Two Closes, vocat' B. and N. containing Three Acres of Land in D. upon Not guilty pleaded and Verdict for the Plaintiff, and upon great Deliberation the Count was held good, and Judgment given for the Plaintiff, for Terra is arable Land. Week and Sparrow's Case, adjudg'd Mic. 15 fac. B. R. And this Judgment was afterwards affirmed in the Exchequer-Chamber in a Writ of Error brought upon this. Private Mf., Vid. Car. 555. Sid. 229.

Parcella terræ does not comprehend a Gar- Parcella terra. den in Ejectione Firme, Moor 702. Palm. 45.

Ejectment de uno Clauso continen' tres Acras per estimationem, ill; but Indictment quare Vi & Armis in Clausum continen' tres Acras per Estimationem fregit, is good. Debt or Demise of Seven Acres per estimat', is ill, Dormer's Case.

Brownl. p. 142.

Declarat' is, Quod cum dimisit to him unum Messuagium, unum Clausum vocat' Dovecoat-Close, continen' tres Acras eidem Messuagio spectan'; per Cur' it does not lie of a Close, tho' coupled with other Words, because the Quality of the Soil is not alledged, as to fay, Land, Meadow, Marsh, &c. And by Coke, if he had bound the Land without shewing the Quality,

Regula.

it had not been good; tho' it was objected, That by all the Words put together, here is sufficient Certainty to put the Party in Possession; and yet some Reports are to the contrary. Ejectione Firme of a Close called White-Close, was faid to be held good in Ellis and Floyd's Case cited in Macdonell's Case: But in Ireland, Ejectment was of a Close called the Upper Kibwell, and of another called the Lower Kibwell, containing Three Acres of Land, was held good. And it is a fure Rule, That the Certainty of the Land ought to be described, and the Quality, &c. And therefore the Cale of Jones and Hoell feems not to be Law, which was Ejectione Firme of Seven Closes, one called Green Mead, and so gave to the others several Names, and the Verdict was for the Plaintiff, and by the Court there it's well enough: For, faid they, when a Name is given to every Close, tho' the Contents of Acres are not mentioned, viz. 10 many of Land, so many of Pasture, it's sufficient, and aided by the Statute of Feofails. 11 Rep. 55. Savill's Cafe. 1 Roll. Rep. 55. mesme Cafe. Cro. fac. 435. Wilks and Sparrow. 2 Roll. Rep. 1. 658, 189. Macdonel's Cafe. Cro. El. 235. Jones and Hoell.

It's not diffin. guished how much of Pas flure, and ill.

In Martin and Nichol's Case, Error was affigned, because the Declaration was of a Melluage, and Forty Acres of Land, Meadow how much of and Pasture thereunto appertaining, and it Meadow, ergo was not diffinguished how much there was in Land, and how much in Pasture, and the Judgment was reverled, Cro. Car. 572. Martin and Nichols. Vid. 4 Mod. 97. Knight versus Simms.

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Observe, In Ejectione Firme or a Pracipe of Acresaccord-100 Acres, this is according to Statute mea. ing to Stafure; but if one bargain and fell 100 Acres of tute-measure. Land to another, that shall not be according to the Statute-measure, but after the usual Account in the Country; in Andrews Case, cited in Ewer and Heydon's Cafe.

The Declaration was, That he was ejected De duabus è duabus Acris fundi, Anglice, Hop-ground. Acris fundi, Per Rolls, it is good in a Grant, but not in Declarations, and the Anglice here does not help it, for the Anglice is not to interpret a Latin Name by which it is called, Stiles Rep.

202, 203. Meers and French.

Ejectment lies de decem Acris Pisarium; for in De decem Acris common Acceptance, Ten Acres of Peafe, Pisarium. and Ten Acres of Land fowed with Peafe, is

all one. I Brownl. 150.

Ejectment of Three hundred Acres of Wast, De 300 Acres inter alia, &c. Per Cur', Wast is uncertain, and of Wast. may comprehend Land of any Quality, and the Sheriff will be at a Loss what Land to deliver; and after the Plaintiff released the Wast and Damages, and took Judgment of the Residue, Hardr. 75. Hancock and Prynn.

Ejectment lies de prima Tonsura of the First De prima Ton-

Crop, Cro. Car. 262. Ward.

Ejectment lies of a Coal-mine, for it is a Pro- De Coalmine. fit well known. Ejectment of Land and a Coal-pit in the same Land, ruled to be good. because it is in a personal Action; aliter in a Real Action, because it is bis petitum, I Rolls Rep. 55. Cro. Jac. 21. Harbotle and Placock. Vide infra.

It lies of a Boillary of Salt-water. Siderf. De un. Boillary of Salt.

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Anglice, Hopground.

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De Rivulo Seu Aqua cursu. Ejectment lies not de Rivulo seu Aquæ cursu, therefore Godbolt, p. 157. n. 213. is not Law; nor a Præcipe lies of it, and Livery and Seisin cannot be made of it; for non moratur, non est sirma, but is always sluctuant, and Execution by babere fac' Possessionem cannot be made of it, but the Action ought to be of so many Acres of Land aqua coopert. but if the Land under the River or Place appertains not to the Plaintiss, but the River only, then upon Disturbance his Remedy is only by Action on the Case upon any Diversion of it, and not aliter, Telv. 143. Challoner and Thomas. Mic. 6 Jac. Challoner and Moor. Cro. Car. 492. Herbert and Llanghlyn's Case.

De Profit ap-

Ejectione Firme lies not de Profit apprender, and so not of a Common or Rent, nor of a Piscary, it must be terra aqua cooperta in such a River, tho' the Court seemed doubtful of it in Molineux's Case, which was, Ejectment of an House and Lands in T. nec non de Libera Piscaria infra Rivulum de Trent, in which Action Damages were entirely given; but to avoid the Question, the Plaintiff released his Damages totally, and his Action quoad the Piscary, and had Judgment for the Residue. Cro. Jac. 146. Molineux.

De Libera Piscaria.

De 100 Acres of Bog.

Messuages, Five hundred Acres of Land, an Hundred Acres of Bog in the Villages and Territories of D. S. and V. Bog is an usual Word, and well known there, and if it were not, the Plaintiss may release his Demand as to that, and have Judgment for the Residue. Another Exception was, because it was in Villis & Territoriis; but per Cur', it's well enough,

In Villis & Territoriis. and of the same Sense; and if not, it is but Surplusage, as to the Territories, but Ejectment of 500 Acres of Mountain in Ireland, is De 500 Acres ill, for it's not of one Nature, but several, as of Mountain Turs, Pasture; but a Præcipe is good de Sa. in Ireland. liceto, de Stagno, de Dominio, by the general Notice the Country hath of them where the Lands lie, and of their Quality. On Ejectment in Ireland, Error was brought in B. R. here, because he brought Ejectment of 40 De 40 Acris Acres of Wood, and 20 Acres of Under- Acris subbosci. wood, and fo one Thing twice demanded, because Underwood is a Species of Wood, fed non allocatur, because this does not appear to the Court, and this shall not be alledged for Error, but ought to be taken in Abatement of the Writ, Cro. Car. 512. Mulcarry and Eyres. 2 Rolls Rep. 166, 189. Macdonnel's 2 Rolls Rep. 487, 482. Warren and Cale. Wakeley.

This Case is more fully reported in a MI.

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Eject. Firme in B. R. in Ireland, De quingent' Acris Mountain; and Judgment upon Verdict given for the Plaintiff there inter the said Macdonel and Stafford; on which Stafford brought a Writ of Error in B. R. in England, and there one of the Errors alledged was, That Mountain is uncertain, for it may be Pasture, Arable or Wood, and so the Sheriff cannot know of what to make Execution; whereupon the Court fent to Justice Winch, Baron Denham, Lee, Attorney of the Wards (he being before Chief Justice of Ireland), to certify to them, what is meant in Ireland by the Word [Mountain], and if it be so certain

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as to be demanded in a Practipe by that Name; upon which they certified, That the Practifers in Ireland follow the Register, Fiz. N. Br. and the Book of Entries; and that in many Places in Ireland are Mountains which contain Lands of divers Natures, as Wood, Arable, Pasture, Heath, Bog, barren Mountain, the Nature of which ought to be express'd in Declarations; and Mountain denominates a Portion of Land in respect of the Situation (as Downes here), but doth not distinguish the Quality of the Land. To which a Surveyor of Ireland agreed, and the Court for the said Error reversed the said Judgment. Tr. 18 Jac. B. R.

De omnibus Decimis.

De quadam portione Decimarum,

Ejectione Firme de omnibus Decimis, is not good, without faying, Garbarum, Fani, or any Certainty of the Nature or Quality of Tythes; it lies not de quadam portione Decimarum generally, but de quadam portione Granorum & Fæni is good; the Nature ought to be shewed, though not the Certainty; and the Ejectment was supposed in May, when there is not any Tythes, and fo not good. It may be, That all the Tything consists in Modo Decimandi for Payment of an yearly Sum in Satisfaction of Tythes, whereof no Ejectione Firme lies. was a Question in Preist and Wood's Case, Cro. Car. 301. Whether an Ejectione Firme lay of Tythes only? It may be of a Rectory, or fuch a Chapel, and of the Tythes thereunto belonging, whereof an Habere fac' Possessionem may be; but it was adjudged pro Querente. The Ejectment was supposed in taking so many Loads of Wheat and Barley, being fevered from the Nine Parts. 1 Roll. Rep. 68. cited

cited in Worral and Harper's Case. 11 Rep. 25. Harper's Cafe. Cro. Car. 301. Preist and Wood.

Ejectment of fo many Acres Jampnorum & De 20 Acris Bruere, and does not express how many of Jampnorum & each, yet good, Mod. Rep. 9. Fitzgerard's Bruere. Cale.

Ejectione Firme de una virgata terræ lies not, De una Virga. and so it was adjudged in the Exchequer-Cham. ta terra. ber. Error was brought of a Judgment in C. B. in Ejectment de Virgata terræ on general Verdict, which is ill, being uncertain in every County; but the Plaintiff below might have released Damages as to that, but now it is too late. Cro. Eliz. 339. Fordan's Cafe. 3 Keb. 450. Hall and Johnson.

Ejectione Firme lies not de Pannagio. Q. de De Pannagio.

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It lies de Herbagio. 2 Rolls Rep. 481, 482. De Herbagio. Ejectione Firme was brought for Entry into

a Messuage sive Tenementum, and Four Acres of Land to the same belonging. Per Cur', the Declaration is uncertain; but it was faid, as to the Four Acres, it was certain enough, and the Words [to the same belonging] are meerly void, and the Plaintiff released Damages, and had Judgment. 3 Cro. 28. Wood and Pain. Cr. El. 186. mesme Case.

Ejectment lies not of a Free Warren. I Keb. Delibera War-

500. Count of the Moiety of 20 Acres of Land, De Moiety of is well enough, and Trespass lies against the 20 Acres of Sheriff, if he does not execute on the Right Land. Places. 1 Keb. 278. Lufton's Cafe.

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It lies de Herbagio. 2 Rolls Rep. 481, 482. De Herbagio.

Ejectione Firme was brought for Entry into a Messuage sive Tenementum, and Four Acres of Land to the same belonging. Per Cur?, the Declaration is uncertain; but it was said, as to the Four Acres, it was certain enough, and the Words [to the same belonging] are meerly void, and the Plaintiff released Damages, and had Judgment. 3 Cro. 28. Wood and Pain. Cr. El. 186. messme Case.

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Count of the Moiety of 20 Acres of Land, De Moiety of is well enough, and Trespass lies against the 20 Acres of Sheriff, if he does not execute on the Right Land. Places, 1 Keb, 278. Lufton's Case.

The Law of Ejenments.

De uno Stabulo.

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Per Cur', Ejectment lies de uno Stabulo, or where ever the Thing is so certain that the Sheriff may do Execution. 1 Keb. 236. Whitacre's Case.

Separalis Pifcaria usque ad C. Separalis Piscaria usque ad filum aquæ can. not be counted upon, but per Windham such Evidence might be given of such Piscary by Metes and Bounds. 1 Keb. 290. Sir Chr. Griese and Adams.

De Capella.

Ejectment lies de Capella, per Windham, 1 Keb. 438.

Of an House and Land in quodam campo junta le Castlebill.

Ejectment was laid on Demise at T. of an House and Land in quodam campo juxta le Castle. bill, which per Cur. is ill, (on Motion in Arrest of Judgment;) for no Execution can ever be directed to any Sheriff; and it must appear where the Land demised lieth. 1 Keb. 777. Took and Atho.

De to Hides of Land.

Carrucat. terre, what.

Ejectment of Ten Hides of Land is good; a Hide of Land is the fame as Carrucat', which is as much as a Plow which is usually intended to have Six Horses may manure in a Year, and being 100 or 120 Acres in Northamptonshire. I Keb. 877. Wright and Sherrard.

De Messung.

Ejectment de 7 Messuagiis sive Tenementis, is ill aster a general Verdict, and it's on Demurrer; this might have been helped by taking Verdict of either: So it is when the Ejectment is de Messuagio & Tenement', it's ill aster General Verdict. 2 Keb. 80, 82. Burbury and Teomans.

Light-house.

Ejectment does not lie of a Light-house, but Action on the Case. 2 Keb. 114.

Ejedment of the Pannage of a Park, is ill. 2 Keb. 460.

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The Law of Ejectments.

Ejectment of a Close of Meadow doubted in De Close of

Steel and Stanly's Cafe. Mic. 22 Car. 2. B. C. Ejedment of 600 Acres of Fen-Marsh, Mea- 600 Acres of dow, arable Lands: Twisden asked the Plaintiff Fen-Marsh, whereof they would take their Verdict, if they Meadow, arable Land.

would have it of Marsh; and as such, give Execution of the Fens in Question, 2 Keb. 23.

Downbarn and Walden.

Ejectment de 20 Villis & Terris in Ireland, De 20 Villis the Court conceived it well enough on 1 Cro. & Terris in 512. the Original Judgment being in C. B. Ireland. and affirmed in B. R. there. 2 Keb. 745.

Ejectment of Two Mills, not faying what,

good. 2 Reb. 875.

Ejectment of a Messuage includes a Garden. De Messuagio

2 Keb. 44.

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Ejectment de virgat' terræ, ill on General Verdict, being uncertain in every County; but the Plaintiff below might have released Damages as to that, but now it is too late. This was in Error of a Judgment in B. R. 2 Keb. 450. Hall and Fobnion.

Ejectment of Moor or Meadow, is ill. 3 Keb. Moor or

529.

Ejest ment lies not of Common or Piscary De Common done; yet being after Verdict, it should be and Piscary. intended appurtenant, and fo well enough: This was in Ejectment of a House and 40 Acres of Pasture. Keb. 738. Barton's Case.

Eject. de quadam Fabrica, Angl', a Smith's De quadam Forge, held good, per Chief Justice Wray.

Demand of a Barony in Wales, is good; a Smith's and by this an Hundred shall be recovered, Forge. per Justice Dodderidge in Stafford and Macdone's De Barony. Lale.

Garden.

De virgata

Meadow.

Fabrica, Angl.

Pracipe

The Law of Ejeaments.

De Dominio.

Pracipe lies, de Dominio in Wales, by Chief Justice Dodderidge in the same Case; for it is a Lordship there, and a Lordship is a Manor.

De Commote.

Pracipe lies of a Commote in Wales; for before there were Shires, there were Commotes. Commote there is certainly known, and is in Nature of an Hundred. Per Justice Dodderidge, in the said Case of Stafford and Macdone. Tr. 18 Jac. B. R., to which Chief Justice Mountague agreed.

De Salino.

Demand of uno Salino in Chefter, is good. 8 Ed. 3. 96. Yet it's not in the Register: By this the Nature and Quality of the Thing is described, and it's commonly known by this Name, by Chief Justice Mountague in the said Case.

De Saliceto.

So de uno Saliceto, is good; because it is well known by this Name.

De Stagno.

De uno Stagno, good; for it's well enough

known by this Name.

De Lingground and Heathground. Ling-ground and Heath-ground in Norfolk are demandable in Actions (per Instice Haughton in the said Case of Stafford) by such Names, and their Names sufficiently describe them there.

De Tanto unius Messuagii quod stat supra Repam. De tanto unius Messuagii quod stat supra Re-

pam, is ill. March's Rep. 97, 98.

De Redoria.

Ejectione Firme brought of the Rectory of D. and upon Not guilty pleaded, the Plaintiff proves Ejectment of the Glebe, but does not prove the Ejectment of the Tythes; it washeld by the Court, That this is against the Plaintiff, in as much as a Rectory is an entire Thing, and therefore he ought to have added to it these Words, Necron de decem Acris Terra, &c. which in Verity comprehends the Glebe,

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as he did in 11 Rep. 53. And for this, D. the Plaintiff, by the Opinion of the Court, was nonsait. Mic. 15 Car. Scaccio. The Lady Beacham's Cale.

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A. is diffeised by B. of a Messuage; B. Ejectment of makes a Leale for Life of the fore Part to C. Part of an and of the hinder Part to D. A. enters into House. the fore Part, and upon this brought Ejectione Firme against C. De una Messuagio, it's good, for he may not demand it by other Name; but Judgment shall be, De Anteriori parte Domus.

Quære If he ought not to declare, De Anteriore parte Domus, or of luch Rooms.

Error of a Judgment in Ejectment in the County Palatine of Durham, the Declaration was, De Mineris Carbon' in G. Object. This is De Mineris very uncertain, for the Plaintiff ought to have named how many Mines; because in that Country leveral Men have several Mines in one Place. Resp. No greater Certainty is required, than that the Sheriff might know of what to deliver Possession, and the Words de Mineris Carbon' ascertain the Thing in Demand: The Exception is, That it is de Mineris Carbon', if it had been de Minera, that is admitted to be certain enough. The Nature of the Thing will admit of no other Certainty, for a Mine of Coals runs through many Lands; and tho' it is but one Mine, yet when it is opened, they usually make several Shafts to let in the Air; and it the Plaintiff had declared but for one Mine, he could have recovered but one Shaft. Per Cur', the Usage must Support this Ejectment. It may be good by the Cultom of the Country, and therefore Judg.

De Pannagio.

Judgment was affirmed. 4 Mod. 143. Whittingham and Andrews. Vid. Showre 364. mesme Case. Pemble and Stern's Case, 1 Levinz 212. The Ejectment was, imer alia de Pannagio: But Ejectment does not lie of that, for Pannagio is but a Privilege to take Pannage. 2. It was of the 4th Part of a Meadow, not shewing how many Acres the Meadow contained, and upon these Exceptions the Judgment was arrested.

De quodam Loco vocat' le Vestry. Ejectment was, De quodam Loco vocat' le Ve-

fry, is good enough.

Ejectment de deux Closes vocat' Gabels, upper and neither adjudged good, and 2 Cro. 654. Ejectment lies de Domo, altho' a Præcipe does not lie of it, and a Close called by a Name, and also the Vestry are Things more certain whereof to make Execution, than 100 Acres of Land lying sparsim in a common Field. 3 Levinz 97.

Huchinson and Puller in Cam' Scac'.

Ejectment, and declares of Two feveral Leases of the same Thing for the same Terms by several Perfons.

Ejectment in B. R. the Plaintiff declares of a Lease, 1 Apr. 32 Car. 2. made by A. B. and C. of a Messuage, &c. in C. for 5 Years from the 30th Day of March then last past. Cumq; etiam, that the said A. and B. omitting C. postea scilicet eod' 1 Die Apr. demised to the Plaintiff pred' Mess. pro 5 ans from the said 30th Day of March, virtute quarum quidem Dimissionum, he entred and was posses'd till ousted by the Desendant, and on Non culp', Verdict and Judgment pro Quer. in B. R. and upon this Error was brought in Cam' Scace', and assigned, that the Declaration was double, being

ing of Two Leases the same Day of the same Thing for the same Term, and he may not enter and be possess'd by both Leases; but

per tot Cur', Judgment was affirmed:

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I. If it be double, it's cured by the Verdick. But, 2 It's not double; for when the Three lease the Whole, and when after Two of them lease all the same Thing, this is a Surrender of the First Lease, and a new Lease of their Parts, and the old Lease continues as to the Third Part of him which does not join in the Second Lease, and so the Lesse entered and was possessed per both Leases, viz. of the Third Part of C. by the First Lease, and of the Two Parts of A. and B by the last Lease. 3 Levinz 117. Turbervill & alii versus Stockton.

Eject. Firme de Cottagio, is good, for Cot-De Cottagio. tage is certain it self, it is a little House, and we ought not to be so precise in this as in a Præcipe in real Action. Adjudged in the same Case of Hamond and Ireland, p. 1650. Intr. H. 1649. Rot. 818. & Accord per Cur' in Rhethe-

Declaration of the Sixth Part of a Mf. in De 6th Part Parochie St. Kath. Coleman-street and St. Gabriel of a Missinge Funchurch-street, and noon the Evidence it and in 2 Parishes.

Fenchurch-street, and upon the Evidence it appeared, that all the Messuage lay in the Parish of St. Kath. Coleman-street, if the Plaintiss hath sailed to prove his Declaration: Levinz argued for Judgment pro Quer', for if one bring an Ejectment of an Acre of Land in D. and S. and all lies in D. he shall recover; or if a Man bring Ejectment of an Acre of Land in D. and Part of it lies in S. he shall recover for such Part as lies in D. Plo. 429. b. If a G 2 Man

The Law of Ejeaments.

Man hath a Title to the Fourth Part of an Acre only, and he brings Ejectment for all the Acre, he shall recover the Fourth Part. Cro. Car. 13. But in this Case the greater Part of the Justices held, That here the Declaration being precisely of the said Part of an entire Thing, viz. a Messuage, That the Evidence doth not maintain it. Vid. 44 Ass. 27. 2 Levinz, Goodwin and Blackman.

Where the Evidence doth not maintain the Issue.

De 5 Glausis de Past' & Prat'. Ejectment de 5 Clausis de Past. & Prati vocat' Faldowne continen' decem acras; after Verdict, it was moved in Arrest of Judgment, that it is too uncertain, not saying how many of the one, nor how many of the other. I Cro. 573. Martin versus Nucholas. I Cro. 29. and Saul's Case, II Rep. 55. Ejectment de Domo repositaria, Angl' a Ware-house, ill, because not known by that Name in the Law. Harper's Case, II Rep. Yel. 117. Owen 180. Stiles 202.

E contra. It was urged, that it lies for a Close, if a Name be given to it. 3 Cro. 235. 2 Cro. 435. 3 Levin. 218. Sid. 295. but per Cur' held to be ill in the principal Case, and Judgment was arrested. Showre 338. Knight and Symms.

De communia Passura of a Fair.

Ejectment doth not lie de communia Paftura, nor of a Fair; but de Manerio de B. cum pertin, if the Fair be appurtenant, is good.

De Cartileg'e.

Ejectment lies for a Curtilage. 4 Mod. 1. It lies de uno Stabule, uno Pomario, uno Cottagio. 1 Lev. 58.

Of a Church.

Ejectment lies of a Church, as de una Domo, vocat' the Parish Church of D.

A Rent granted with a Proviso, That is it be not paid then, that he may enter and retain the Land, Queusg; &c. the Grantee tain, Queusg; here hath such an Estate as will maintain an

Ejectment. 1 Levinz 170.

Eject. Firme of an House, in Australi parte vici, Angl' the High-Street in Winchester, held good; alias by the Chief Justice, if it had been Ex australi parte vie, for then the South Part had been but a Boundary. Mere and French's Case. Tr. 1650. B. supra. Ejectione Firme de Domo Mansionali, was held good, because [Mansionali] makes it certain; but the Court agreed, that if it had been De Domo generally, it had been ill, because this may be a Barn or Sheep-house.

Eject. Firme de Domo Fermario vocat' Holtga-

mio, held good.

Now as to Declarations in this Action, I shall lay down some General Rules.

1. The Plaintiff must declare on one Title only; and therefore in the Case of the Lord Chandois and Pitts, the Count was of Three several Leases of the Whole to the Desendant; the Council prayed that one B. may be made Desendant, and that the Plaintiff might elect to proceed on one only Title, which the Court granted, and said, altho' the Party may declare on several Leases, one at and another from such a Day, yet cannot declare on several Lessors. And the Court ordered the Plaintiff to elect one Title only. Trip. 22 Car. 2. B. R.

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- 2. In Ejectione Firme of a Close, the Quantity of them and their Nature ought to be expressed (viz.) Land, Meadow or Pasture. It's a sure Rule the Certainty of the Land ought to be described, and the Quality, 11 Rep. 55. Savill's Case.
- 3. In Ejectione Firme, Surplusage in the Count is not vitious. Dyer 304, 305.
- 4. If the Entry and Ejectment be supposed in the Declaration to be before the Commencement of the Lease, the Declaration is void. Vide Postea.
- 9. It must be alledged in what Vill the Tenements are. Vide infra.
- 6. The Plaintiff must make his Title truly. Vide infra.

The Entry to deliver Declarations in Ejectment, is not sufficient to avoid a Fine, without express Authority to enter to avoid the Fine; so was the Case reported, 2 Saunders 319. Tenant for Life levies a Fine sur Conifance de droit come ceo, with Proclamation, and he in Reversion for Life, within Five Years after the Death of Tenant for Life, directs one to deliver a Declaration in Ejectment to the Tenant in Possession; this shall not amount to an Entry to avoid the Fine, tho' this was the Declaration which contained the Lease upon which the Ejectment was brought. Keb. 555. Clerk and Pymell. Mic. 21 Car. 2. B. R.

DECLARATION.

In Ejeament in B. C. the Plaintiff there Variance bedeclares in the First Declaration, which is tweenthe Imcalled the Imparlance-Roll, of a Leafe made the parlance-Roll 20th of September for Five Years then next en. and Issuefuing; and after Imparlance upon the Iffue- Roll, as to Roll (for there the Plaintiff useth to declare mencement again after Imparlance) the Plaintiff declares of the Leafe. of a Lease made the 30th of Fanuary the same Year, Habend' for Five Years from the 20th of December before; and upon Issue, found pro Quer'. Per Cur', it's erroneous, for he declared upon one Leafe, and went to Issue upon another; for when a Leafe is made the 20th of Fanuary, Habend' from the 20th of December before, this is but a Leafe in Interest till the 30th of January, and not before, and only in Computation from the 20th of December; and by the Prothonotaries, the Imparlance-Roll is The Imparthe material Declaration, and if Variance be lance Roll is from it in Matter of Substance, this is not the material good nor amendable; tho' it was urged, That Declaration. the last Declaration shall be taken as a new Declaration, without any Reference to the other, and then it shall be good. I Roll. Rep. 448. Milliward and Watts. 3 Bulftr. 229. Millward and Watts. Cr. Jac. 415. mesme Cafe.

But in Merril and Smith's Cafe, Cro. fac. 311. the First Declaration was, That T.S. the 25th of March, 6 Jan. let to the Plaintiff the Land, &c. for Seven Years, by Vertue whereof the Plaintiff entred and was possessed until the Desendant, postea scil. Anno sexto supradict'. entred and ejected him, so there is not any G 4

Day



The first Declaration is

Day mentioned. After Imparlance (as the Course in the Common Bench is) the Plaintiff made a Second Declaration, and there (without any Space made) the Ejectment is supposed to be the 26th of May Anno supradio? and the Writ was brought on this Ejectment 7 Fac. The Defendant pleads Non Culp', and found against him, and Judgment; and this was affigned for Error; per Cur' the First Declaration is the principal and material Declamost ration, and the Second is but a Recital of the First. And if any Matter of Substance be omitted in the First, it cannot be aided and amended by the Second, for that begins with an Alias prout patet, so it is but a meer Recital; and therefore if the First be not good, tho' the Second be good, and he plead thereto, and the Trial is thereupon, yet the Judgment is erroneous: But as this Case is, the First Declaration is well enough, for he declares of a Leafe the 25th of March, 6 Fac. which is the First Day of that Year, and the Declaration quod postea scil', 6 Fac. the Desendant ejected him, is certain enough for the Year wherein he made the Ejectment; so it appears to be after the Leafe made, and in the same Year 6 Fac. wherein the Ejectment was, and the Action is brought the 7 Jac. and the Ejectment being made between the making of the Leafe and the Action brought, it's good enough, tho' there is not any certain Day alledged. Cro. Fac. 311. Merril and Smith.

Original in Ejectment was brought against H. and Three others, and the Plaintiff counts against Three of the Defendants, and not Simul cum against the Fourth, and Judgment was arrested for this, 2 Brownl. 129. It's

Simul cum.

It's a fure Rule, if the Entry and Eject- Entry and ment be supposed in the Declaration to be Ejectment before the Commencement of the Leafe, the fupposed be-Declaration is void, as in Powre and Haw- mencement kins's Case cited, Yelv. 182, in Davis's Case, of the Lease. The Plaintiff declares upon a Leafe of E. 27 April, Anno fexto, and lays the Ejectment to be the 26th of April, Anno fexto supradicto, the Declaration was adjudged ill for this Caufe: But the Court will and have help'd it by as favourable Construction as may be, as in the principal Case in Yelverton. The Plaintiff declares of a Leafe made by C. the 6th of May, Anno septimo, of a Messuage, &c. and that the Plaintiff enter'd, and was possessed, quousque postea, the Desendant 18 die ejusdem mensis Maii Anno sexto supradict' ejected him; it was moved in Arrest of Judgment upon Verdict for the Defendant (to fave Costs). that the Declaration was insufficient, for This Action that this Action was grounded on two Things, is ground-(viz.) upon the Leafe, and upon the Eject- ed on two ment; and these two ought to be one after Things, (viz.) the other. And in this Case the Ejectment the Lease, and is suppose an Year before the Lease made, ment. for the Lease is Anno septimo, and the Ejectment supposed to be made Anno fexto; yet the Declaration was adjudged good, and the Word [fexto] to be void; for the Day of the Ejectment being the 18th Day ejusdem Menfin, it shall be intended to be in the same Year in which the Leafe is supposed to be made, Brownl. p. 146. mesme Case. So in Adams and Goofe's Case, Cro. Jac. 97. Ejectment the Plaintiff declared of a Leafe the 6th of September, and that he was posses-

The Law of Ejeaments.

sed, and that, postea scilit', the 4th of September the Defendant ejected him; and by three Justices the Declaration was held good, and the 4th of September is impossible and repugnant, and the Postea ejecit is well enough. But in Goodgaine's Case, I Siderf. the Jury found that F. N. let to the Plaintiff for Five Years the 24th of June, Anno 1650, by Force whereof the Plaintiff enters the 24th of June, 1650. (the Leale being to commence à die datus) and that, postea scilit, 24th of June, 1650. the Defendant ejected him; so that the Entry and Ejectment was supposed before the Leafe, and Judgment was against the Plaintiff for this Defect. The Council of the contrary Side stood much upon the Case of Adams and Goose: But per Cur', that Case differs from this; for in Adams's Case it appeared to be, that he enter'd by Force of the Leafe, and was possessed thereof till he was ejected; but in this Case he enter'd the 24th of June, which was before the Leafe commenced: And Judgment was given, 1. Because he said he enter'd the 24th of June, and so was a Disseisor. 2. Because the Declaration is contrary in it felf. And Clifford's Case, Dyer 89. a. and Green and Moody's Case were cited. Bridgman said, he found no Reason for Adams and Goose's Case, Yelv. 182. Davis and Pardy, Cro Jac. 97. Adams and Goofe, Siderf. p. 8. Goodgaine and Wakefeild.

The Entry and Ejectment suppoied after the Posten. The Entry and Ejectment being supposed after the Postea, (viz.) to be committed before the Lease shall be rejected, notwith-standing the Case in Sidersin, which contra-

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The Law of Ejeaments.

dicts the Case of Adams and Goose in Crook, which is the best Law.

If a Man deliver a Declaration in Michaelmas Term, and his Title doth not accrue till after Michaelmas Term, yet if he deliver a Declaration in Hillary Term, this is a Declaration de novo, for else it will be erroneous. So it is of Words spoken after the Term the Plaintiff hath declared. 27 Car. 2. Hutchip.

for versus Tomes, Rot. 1591.

Ejectione Firme of a Lease of H. P. 22d of Virtute cujus May, 20 Fac. of, &c. Hab' à primo die Maii & iisdem die for three Years, virtute cujus the Lessee en ejected him, ter'd, and was possessed quousque postea scilt' how conftruii/dem die & anno, the Defendant ejected him. ed. It was affigned for Error, that iifdem die, &c. refers to the First Day of May, which is ultimum antecedens, and then the Ejectment is alledged before the Leafe made, to the Declaration not good: But per Cur', the Allegation of the First Day of May is but for the Beginning of the Term, and the Declaration being quod virtute dimissionis, he enter'd postea iisdem die & anno, &c. that refers to the Day of the Leafe made, otherwise he cannot be possessed virtute dimissionis; and Judgment was affirmed in the Exchequer Chamber. Cro. Fac. 662. Rutter and Mills.

The common Mistake has been (as is observable in our Book Cases) in laying the Lease to be à die datus, and the Entry the same Day, which is a Disseisin not purged by the Commencement of the Lease; for where an Interest passet [a] is exclusive, and so the Entry the same Day was before the Lease was to commence, and is a Disseising the Lease was to commence, and is a Disseising the Lease was to commence, and is a Disseising the Lease was to commence, and is a Disseising the lease was to commence, and is a Disseising the lease was to commence, and is a Disseising the lease was to commence, and is a Disseising the lease was to commence, and is a Disseising the lease was to commence, and is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease was to commence which is a Disseising the lease which is a Disseising the lease was to commence which is a Disseising the lease which is a Disease which is a Disseising the lease which is a Disseising the le

feifin;

Virtute cujus.

Virtute cujus, how taken.

leisin; but where no Interest passes, as in Cases of Obligations, contra. In Douglas and Shank's Case, Cro. Eliz. 766. the Plaintiff declares of a Lease for Years, Habend' à die da. tus, virtute cujus dimissionis he enter'd, and was possessed until he was ejected by the Defendant. Not guilty pleaded. The Declaration is ill, because the Time of the Entry is not alledged; for if he entred at the Day of the Demile, he is a Diffeisor, and the Action not maintainable. The strongest Thall be taken against the Plaintiff, (viz.) that he entred the Day of the Leafe made, and that is not supplied by the Words virtute cujus]; but no Judgment was given, because Two against Two. Yet in Dyer 89. in Mar. gine, it is said, because he did not aver in fado that he enter'd after the Day of the Date, (for the Leafe doth not commence till the next Day,) that Judgment was arrested, absente Popbam. And another Case is there cited, M. 44, or 42 El. B. R. in Ejectione Firme upon a Leafe made to commence at Michaelmas, and the Plaintiff declares, that he virtute dimissionis, &c. and it was moved in Arrest of Judgment, because he saith not he enter'd after Michaelmas. And Dyer 89. was cited, and Gaudy and Fenner held it ill; per Popham, it is aided by the Statute of Feofails, because it is Form only, and the Demile is the Substance; and per Popham, after Michaelmas he is Termor by the Continuance of the Possession, Quod Fenner and Gaudy negaverunt. But in Wakely and Warner's Cafe Ejectment was brought in Ireland, and Judgment pro Querente. It was assigned for Error,

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ror, that the Plaintiff shews a Lease made to him to commence at a Day to come, virtute Virtute cujus cujus he enter'd, and was possessed until eje- & pretextu cted by the Defendant, and shews not when cujus he enhe enter'd, either after or before the Day ter'd. at which the Leafe commenced: non allocatur, because he said virtute cujus, &c. But by Lea, Chief Justice, if he had said prætextu cujus, it had been otherwise. Moor 466.

Where a Declaration in Ejectment, for the Where the Purpose, is made of Easter Term, and the Demise is laid before Demise is laid after the End of Easter Term, the Time in and before the Essoin-Day of Trinity Term, the Declaraand also delivered before the Essoin-Day of tion. Trinity Term to the Tenant in Possession: yet this shall be good, though the Demise is laid after Easter Term, because when the Tenant in Possession appears, he must be made a Defendant, and accept a Declaration of Trinity Term, and plead thereunto Not guilty, and at the Trial confess Lease, Entry, and Oufter, otherwise there will be Judg. ment against the casual Ejector. So that when the Declaration, to which the Tenant

it is well. Ejectment of a Lease made the 12th of Commence-December, habend' à primo die. On Not guilty, ment. the Jury find a Leafe made in bec verba. which was dated primo Decemb', Habend' from henceforth, but delivered the 12th of December; and the Queltion was, Whether this be according to the Declaration? It was objected, That from the Day of the Date, and

is made a Defendant, is made of Trinity

Term, that is then after the Demile, and fo

Habend' à die datus expounded.

from henceforth, are several Commencements. for the one begins the Day it was fealed, the other the Day after; but per Cur', they are all one, being a Computation of Time from the Time pait, and both shall be pleaded to begin from the Day of the Date, when the Leafe is afterward fealed another Day. But if he declares of a Leafe the First of December, Habend' à die datus, the Ejectment cannot be alledged the same Day; but if the Leafe be made the First of December, babend' henceforth, the Ejectment may be alledged the fame Day. So was the Cafe of Orborn and Ryder: Ejectment on a Leafe made I Fan 3 fac. Habend' à die datus, and the Ejectment was the same Day, and ruled to be good, though the Habend' is as much as to fay, from the Day of the Date. But per Cur', the Date is the Time of the Delivery, and it differs from the Day of the Date; wherefore the Ejectment alledged postea the same Day is good enough. Cro. fac. p. 258. Lluellyn and Williams, and p. 135. Osborn and Ryder.

Ejectione Firme of a Lease dated the 6th of December, 17 fac. Hab' à die datus, upon Evidence the Leafe was shewed, and was dated the 6th of December, 19 Jac. Hab' à die confectionis, the Plaintiff was nonfuited.

Fac. Scavage's Cale.

The Plaintiff declares upon a Leafe made the 10th Day of October, Habend' from the 20th Day of November for five Years; the Question was upon a special Verdict, Whether this was a good Leafe or not? Judgment was arrested. It shall not begin from the

Time

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Time of the Delivery; but it's an uncertain Uncertain Limitation, and cannot be known what No. Limitation of the Commenter he meant, last past, or next ensuing. But the Law will eject an impossible Limitation, as from the 31st of September, because it cannot be any Part of the Parties Agreement. The Declaration was, Quod cum f. H. No Day of by his Indenture bearing dated the 20th of the Delivery May, 32 Eliz. had set to him an House, and shews not when the Lease was made; for he doth not shew any Day of the Delivery. Per Cur', it's good, for it shall be intended to be delivered at the Day of the Date. Mod. Rep. p. 180. 3 Leon. p. 266. Knivet and Cope.

In Ejectment of the Manor of D. contain-Variance. ing 250 Acres, be it more or less, with Letters of Attorney, reciting, Whereas J. the Lessor had made a Lease of a Manor containing 250 Acres, and Authority to make Livery according to the recited Lease. Per Cur', the Variance is satal, and the Plaintiff was nonsuited. 3 Keb. 691. Smith and

Talbot, Mic. 18 Car. 2.

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Plaintiff declares, That P.C. by Indenture In what Villapud S. let unto him an House, and 20 Acres of Land by the Name of all the Tenements in S. After Verdict Judgment was arrested, because it was not alledged in what Vill the Tenements are, and the naming of the Vill in the Pernomen is not material. Cro. El. 822. Pernomen. Gray and Chapman.

was, That at E. in Com' predict', he did demise One Messuage, Four Gardens, Two hundred Acres of Land, Eighty Acres of Pasture called East-Dizard in the said County. On

Not

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Not guilty, the Plaintiff had Judgment. It was Error, because the Plaintiff in his Declaration did not shew in what Town, Parish, Hamlet, or Place, the said Tenement called East-Dizard lay; and Judgment was

reversed in the Exchequer-Chamber.

Declaration was of a Leafe of Serieant Hele, That he the 16th of fanuary, 44 Eliz. by Indenture dated the 2d of January, demised, &c. It was moved, that the Declaration was not good, because it is that he demised the 16th of January by Indenture, dated the 2d of Fanuary, and he does not fay primo delibat' the 16th of January; for otherwife it shall be intended to be delivered the Day it bears date. But per Cur', it's good; for tho' a Deed shall be intended to be delivered the Days it bears Date, unless the contrary be shewed; yet when it's said, he demised such a Day by Indenture dated fuch a Day before, it must be necessarily intended it was not delivered the same Day it bears date, but upon the Day of the Demile, as it is alledged, Cro. Eliz. 890. House and Laxton, Cro. Eliz. p. 773. Hall and Denby.

And the Verdict often aids and intends, that it was delivered the same Day it bears Date, as in Heaton and Hurleston's Case. The Declaration was, Whereas J. S. by Indenture the 9th of June, 19 Jac. dimissit, &c. Habend' terminum prædict à die datus sigillationis Indenturæ prædictæ for three Years; virtute cujus the Plaintiss the 10th of June, 19 Jac. enter'd, and was possessed until, &c. and Verdict pro Quer' on Not guilty. Per Gur', When the Verdict has found him guilty upon

When the Leafe shall be intended to be delivered on the Day of the Demise, and not of the Date.

tipon the Declaration, and the Ejectment is alledged according to the Declaration, it may well be intended that the Indenture bore Date, and was fealed and delivered the fame Day mentioned in the Declaration of the Lease; though it was objected, That neither the Day of the Date, nor of the Sealing and Delivery of the Indenture, are mentioned, and to the Declaration uncertain. But Judgment pro Querente. Cro. Fac. 646. Heaton and Hurleston.

Now in Wakely and Warren's Cale, though the Plaintiff does not shew in his Declaration when he enter'd, either after or before the Day on which the Leafe commenced, yet it's good enough; because he saith, the Lease to him made was to commence at a Day to come, virtute cujus he enter'd, and was possessed until, Oc. Aliter had it been, if he had said pretextu cujus. 2 Rolls Rep. 466. Wakely and Warren.

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Now the Judges favour Declarations in Virtuti cujus, Ejectment, as may be seen, I Ventr. 136. 6 pretextu The Plaintiff declares in Ejectment, That cujus, he en-J. S. demised to him per quoddam scriptum Difference Obligatorium, Oc. Habend' à die datus Inden- between tura pradicta. Per Cur', The Writing shall them. be intended an Indenture, though it be called Scriptum Obligatorium, and every Deed obligeth; but if it shall not be intended Indented, then the Lease shall begin presently, as if it had been made from the 4th of Sept.

But a Declaration was of a Leale, Habend' à die datus Indenturæ prædicte, and does not speak of any Indenture before; and the Declaration was adjudged naught. But Ejectione Firme of a Leafe made the 20th of August, Habend'

Habend' from Michaelmas then last past ante datum bujus Indenturæ, and neither shewed the Indenture nor the Date thereos; and per Cur', it's well enough. The Addition, ante datum Indenturæ, shall be void, the other being good, and the Beginning of the Lease appearing certain enough. Hetley 63. Brady and Johnson. Cro. Eliz. 606. Darrel and Middleton.

A special Verdict in Ejectment was found in Ireland, and Judgment there pro Quer'. Error was brought in B. R. in England: The Declaration was, That the Plaintiff declared upon a Demise made 12 Jun', &c. Habend' à predicto duodecimo die Junii, (which must be the 13th Day of the same Month) u/q; &c. Virtute cujus quidem dimissionis he enter'd, &c. and that the Defendant, postea scilt' eod' duodecimo die Junii, did eject him, &c. So that it appears upon the Face of the Declaration, that the Defendant entered before the Plaintiff had a Title, for the Lease commenced the 13th of June, and the Entry was on the 12th of that Month. And it's the same Point as Siderfin 8. 2 Croke 69. Lease was made the 24th of June for five Years, Habend' à die datus, which must be the 25th, by Vertue whereof the Plaintiff enter'd, and that the Desendant, postea scilt' 24 June, did eject him, which must be before the Commencement of the Leafe.

Per Cur', The Plaintiff enter'd as a Disseifor by his own shewing, and thereupon Judgment was reversed. 3 Mod. 198. Evans and Crocker.

Poften feilt'.

Ejectione Firme of a Lease made the 21st of October, 4 Jac. & quod postea scilicet eodem 21 die Octob. Anno tertio supradicto, he eject. ed him: And the Addition of a Year. which was not mentioned before, and which is repugnant to that Day which was mentioned, is idle, and shall be taken for null; Et postea the same Day shall be good enough.

Cro. Fac. 154. Brigate and Short.

Error was affigned, for that the Plaintiff Ejectment of did count of the Lease of the fourth Part of the 4th Part an House in N. in sour Parts to be divided, in sour Parts by Force of which he enter'd in Tenementum to be divided, prædicum, and was inde possessionat' till the De- and declares fendant did eject him de Tenementis prædictis, De Tenementis whereas he ought to suppose his Entry into Pradictis. the Fourth Part, and the Ejectment of the Fourth Part, sed non alloc'; for the Entry and Ejectment supposed de Tenementis prædictis shall not be intended of the intire Tenement, but of the Fourth Part of the House, according to his Declaration. Cro. Eliz. 286. Raw on and Mainard.

Ejectment for Tythes, not faying by Deed, Judgment was reversed. 2 Keb. 376. Angell

and Rolf.

The Declaration was of several Messuages in the several Parishes of St. Michael, St. Fames, St. Peter, and St. Paul, and that Part of the Premisses lay in the Parishes of St. Peter and St. Paul; but that there is no Parish called the Parish of St. Peter, nor none called the Parish of St. Paul. Per Cur', The Copulation [Et] shall be referred to that which is real, and hath Existence, ut res magis valeat, to make them both one Parish; and the Words H 2

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The Law of Ejeaments.

Words [several Parishes] is supplied by the other Parishes aforenamed. Hardr. 336. In gleton and Wakeman.

By Coheirs or Coparceners:

Quod dimiserunt.

Coheirs declare by the Lessee of a Lessee, and why. Declaration by Coparceners, Quod dimiferunt is good; therefore Molliner and Robinfon's Case, Moor 682. where the Lease was made by Two Coparceners, and it was declared Quod dimiserunt: To which it was excepted, that the Lease is the several Lease of each of them for his Moiety, which was there ruled a good Exception, is not Law. 2 Brownlow 207. Cro. Eliz. 615. 2 Keb. 192. Moor 682.

And now Ejectments in such Cases are by the Lessee of a Lessee of the whole by many Coheirs, which is by reason of the Uncertainty of the Part claimed by the Lessors. And per Cur', a Lease of all Parts warrants the Lease of all. 2 Keb. 700.

By Tenants in Common.

If Two Tenants in common join in a Lease for Years to bring Ejectment, and Count Quod dimisissent, it's naught; for it is a several Lease of their Moieties, and they must declare, Quod cum one of them demised the one Moiety, and the other the other Moiety. I Brownl. 13. Cr. Fac. 166. Mantley's Case.

If one Tenant in Common take the whole Profit, the other has no Remedy by Law against him, for the taking the whole Profits is no Ejectment; but if he drive away the Cattle of the other Tenant in Common off

the

the Land, or not suffer him to enter and occupy the Land, this is an Expulsion, and he may have Ejectione Firme for the one Moiety, and recover Damages for the Entry, but not for the mean Profits. I Instit. p. 199. b.

By Baron and Feme.

The Plaintiff declares of a Leafe made to him by Baron and Feme generally, and does not alledge it to be by Deed: It was a great Question in our Books, whether this be good or not; but now it is ruled to be good by many Precedents, 2 Rep. 61. Wiscot's Cafe.

By Fointenants.

C. and R. and W. Daughter to R. are Jointenants for Years; W. lets her Part to C. and C. and R. join in this Lease of the entire Land to the Plaintiff for three Years. Popham and Fenner held, That that Lease well warrants the Declaration; for upon the Matter they both let the entire, and upon this general Count it is good. Telverton and Williams è contra, because the Count supposeth they both let the Entire as Jointenants; for fo it is intended by the general Count, which Two as Joinappears to be falfe, for they two let two Parts tenants, and jointly, and the one of them having a third one as Tenant Part as Tenant in Common, lets that only, in Common, demise the and so the Declaration ought to have shewed Commons, in the Truth and the special Matter. And be- such Cases cause it is difficult, they use in such Case to how to demake a Leafe, and the Lessee to make a se- clare. cond Leafe, and the fecond Leffee to declare

generally; and so all the Matter shall come in Evidence. Fleming, before whom it was tried by Niss prius, over-ruled it, that this Declaration was well maintained by the Lease, and the Jury gave a Verdict according to his Opinion. Cro. Jac. p. 83. Jordan and Steere.

Upon a Lease by Tenant for Life, and him in Remainder.

A. Tenant for Life, Remainder to B. in Fee, they both by Indenture join in a Leafe to the Plaintiff. Per Cur', this is the Leafe of A. during his Life, the Confirmation of B. and after the Death of A. it is the Leafe of B. and the Confirmation of A. And because the Plaintiff in Ejectment had counted of a Joint Leafe by A. and B. it was adjudged against him. 6 Rep. 15. Treport's Case.

So is the Case in Popham, p. 57. upon a Demise by Dorothy Pool and Robert Smith, it was thus on a special Verdict: Dorothy was Tenant for Life, Remainder to Smith in Fee, and they being so seised, made the Lease in the Declaration. Per Cur', the Lease found per the Verdict doth not warrant the Lease alledged in the Declaration; for during Dorothy's Life it is her Demise, and not the Demise of Smith, but as his Consistantion for that Time, for he had nothing to do to meddle with the Land during the Life of Dorothy, and after her Death it shall be said to be the Demise of Smith, and not before. Poph. 57. King and Berry.

Verdia.

By a Corporation.

The Plaintiff declares upon a Leafe to him made by the President, Fellows, and Scholars of St. Fohn's College, Oxon, and in the Conclusion he doth not fay, Hic in Curia prolat'. Per Williams, it is not good. The Ejectment-Leafe being made by a Corporation, they fealed the Leafe, and delivered it by their Attorney, having a Letter of Attorney from them to deliver the fame; they cannot do this in any other Manner than by their Attorney. 1 Bulftr. 119. Lord Norris's Cafe.

Hill. 36 Eliz. Carter and Cromwell, in Ejectione Firme, the Plaintiff counts per Lease made by the Warden of All-Souls College in And Exception was taken, because Oxon. the Name of Baptism of the Warden was omitted, but adjudged there need not; the Difference is where a Corporation is fole Person, as Bishop there may be his Name; Aliter Aggregate. Dyer 86. Marg.

Ejectment was brought on a Demise of a Corporation, not faying by Deed. Per Cur', Judgment shall not be arrested for this on Judgment by cognovit Actionem at the Affizes, but it shall be intended after this as well as

after a Verdict.

Upon a Lease by Commissioners of Bankrupt.

Commissioners of Bankrupt had assigned the Land in Question to the Lessor of the Plaintiff, which Indenture was afterwards inrolled; but the Declaration was of a Demile H 4

The Law of Ejeaments.

mise made aster the Indenture, and before the Involment: And whether that Demise were sufficient to entitle the Lessor of the Plaintiss, was the Question in Perry and Bowe's Case. Per Cur', it is not sufficient. Vide le Case, 2 Ventr. 360. Perry and Bower.

By Copyholder.

If a Lease be found made by a Guardian or Copyholder, such a Lease will maintain the Declaration, though their Leases are void against the Lord and Infant. Hardr. 330. Wheeler's Case.

Vide supra, Tit. Who shall have Ejectione

By Administrator.

He ought to shew how the Archbishop granted it, either as Ordinary, or by his Prerogative; and therefore Exception was taken to a Declaration in Ejectment, because the Plaintist conveyed his Interest by an Administrator of all the Goods of the Lessee in Sussex and Kent, but shews not how the Archbishop granted it, either as Ordinary, or by his Prerogative. And this was held by the Court to be a material Exception. But because all the Precedents in B. R. and B. C. were so in general, without shewing how, and because they would not change Precedents, they disallowed the Exception. Cro. Eliz. p. 6. Dorrel and Collins.

in Arrest of Judgment, That the Declaration (brought

Precedents not to be changed. (brought by Administratrix) was not good; because the granting forth Letters of Administration was in this Manner, (viz.) Administratio commissa fuit querenti per William Lewin Vicarium generalem in spiritualibus Episc. Rot. without averring, that at the Time of the granting Letters of Administration, the Bishop was in remotis agendis, for a Bishop prefent in England cannot have Vicarium. But per Cur', the Vicar-General in Spiritualibus amounts to a Chancellor; for in the Truth, a Chancellor is Vicar-General to the Bishop. Vicar-Gene-2. The Declaration is not Episcop. Roff. loci il. ral. lius ordinarii. But per Cur', all Precedents are so; and in a Declaration such Allegation needs not, but by way of Bar it is necessary. 3. The Plaintiff declares of Ejectment, and allo quod bona & catalla ibid' invent' cepit; and in the Verdict the Damages for the Ejectment and Goods are entirely taxed Quære de boc. I Leon. p. 312. Gilbam and Lovelace.

Ejectione Firme was brought of a Lease of Tythes, and shews not that it was by Deed, and ruled to be ill, because Tythes cannot pass without Deed. Cro. Jac. 613. Swadling

and Peers.

The Law of Ejeaments.

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In Gillam and Lovelace's Case it was moved in Arrest of Judgment, That the Declaration (brought

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and Peers.

CHAP. VII.

Where in the Declaration a Life must be averred, and where it need not. Of Delivery of Declarations at or after the Essoin Day. De. clarations, when to be enter'd, as of the same Term where the Copies need not to be paid for. Declarations, when amendable or not. Of expressing the Vills where the Lands lie. Of the Pernomen. Declaration need not be of more Acres than be was ejected out of. Of the Forms of the Declaration; Vi & Armis omitted; Extratenet omitted. The Precedent of Deelarations in C. B. in B. R. in Scaccario. The Indorsement on the Copy to be left with the Tenant, and what the Tenant is to do thereupon. The Rule for confessing Lease, Entry, and Ouster, in B. C. and in B. R. The Form of an Affidavit in Ejectment to move for Judgment against the casual Ejector.

If one do declare upon a Lease in Ejetione Firme, and that by Vertue of that Lease he was in Possession of the Lands thereby let to him, until that he was ejected by the Desendant; it is supposed that the Lessor, who made the Lease to him, was alive at the Time of the Action brought. Pract. Reg. 110.

The Plaintiff in Ejectment declared of a Lease for three Years, if the Wise of the Plaintiff shall so long live, and does not shew that the Wise is yet in Life: Yet per Cur,

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this being after a Verdict, is made good by the Stat. 21 Fac. of Amendments, after Examination by the Sheriff. And in Arundel's Case, in Ejectment the Plaintiff declares that the Lady Morley being only Tenant for Life. made a Leafe to him for three Years, if she should so long live; virtute cujus intravit & fuit possessionat' until the Desendant enter'd upon him, & illum à firma sua prædicta termino (uo nondum finito extratenet, &c. and he did not aver the Life of the Lady Morley. per Cur', this amounts to an Averment, for he faith his Term is not yet ended, which implies she is alive, and the Years not expired; and this was after a Verdict. But had it been demurred to, it had been more ambiguous. So Dyer 204. in Ejectione Firme on a Leafe, his Supposition that the Person adbuc seistus existit, implies his Life. Siderfin, p. 61. Palmer Rep. 267, 268. Arundel and Mead, Cro. Fac. mesme Case, 2 Brownl. 165.

It was the Opinion of the Court in Cro. Eliz. p. 18. Higgins and Grant's Case, That if in Ejectment one declares of a Lease by a Person, he ought to aver his Life, for by his Death his Lease is void; but it's now otherwise. 2 Bulftr. 79. Cro. Eliz. 18. Higgins and

Grant.

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Of the Delivery of Declarations, Filing and Entry.

The Court, in Car. 2. Snow and Cooley's A new Decla-Case, upon Motion, ordered, That a new ration deli-Declaration delivered on the Essoin-Day vered on the should be sufficient, (the old one being delivered

livered before) the Lessee dying, and the Name was changed, there being sufficient Notice; and this being the Act of God, shall

not Prejudice. 1 Keb. 755.

The Declaration is delivered after the Effoin-Day, and the Consequence.

If the Declaration in Ejectment be delivered after the Essoin-Day, it is but enter'd of that Term (and not of the Term before) and the Plaintiff in such Case cannot have Judgment the same Term; but if he doth not move the following Term to have Judg. ment, (especially if any Assizes intervene) he cannot have it without new Notice left at the House of the Desendant, and the Desault made at first. 1 Keb. 721. Bluet's Cale.

What Day the Bill was minable whether after the Day of the the fame Term.

If the Declaration in Ejectment be of Michaelmas Term, which relates to the first filled, is exa- Day of the Term, yet it's a Matter of Evidence, and examinable what Day the Bill was filed; and if it was after the Day of the Leafe, tho'it's Leafe, all is well. On a special Verdict it was moved for the Defendant, that the De. claration was in Michaelmas Term, 2 Jac. 2. and the Demise is laid to be the 30th of October, 2 Jac. 2. and so after the Term began. Note, The Declaration cited an Original, and an Original was produced, Tefte 2 Nov. Which was after the Demise; and the Prothonotaries informed the Court, That this was frequently allowed, and that no Memorandums of the Originals bearing Tefte within the Term, was used to be made upon the Record. Sid. p. 432. Prodger's Cale. 2 Vent. Tonstale and Broad

It is the Course of the Court in Ejectment, If the Owner of the Lands comes in and prays

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all to be Defendant, the Declaration shall be If the Owner enter'd as of this Term, altho' it were of the Prays to be last Term, against the casual Ejector; but yet made Defenbeing by Favour of the Court admitted, he claration to shall have no new Imparlance besides that be enter'd as which the casual Ejector had. And by Hide, of the same there is Difference between the Tenant in Term, but Possession, who is Defendant ex debito on his no new Im-Prayer; contra of 7. S. who is only concerned n Title. I Keb. 706. Roch and Plumpton.

If the Declaration filed be paid for, they Where Coneed not pay for the Copies, and so a Trial pies of the at Bar shall not be hinder'd for want of Pay. Declaration ment of the Copies. 2 Keb. 805.

I find a Rule of Court to change the paid for. Year, thus:

parlance.

ff. Mich. 13 Car. Dedinad eft per Curiam nono die Ocot qui quer narras tionem fuam in intrat' inter partes de Cermino St. Trin ult intrat in Anno dimission emendabit. Et ubi per milpzisionem Clerici allegabit dimission feri duodecimo die Apzilis Anno undecimo Caroli fferi debuit Anno duodecimo & quer folveret Def' mils per Magiftrid Gulffon taxand pro emendatione illa er motione Magistri Boon.

Lessee for three Years makes a Lease for Lease not five Years in Ejectment to try the Title, and warranted the Jury on special Verdict doubt whether by the Dethe Defendant be guilty for 3 or 5 Years. claration, Per Cur', the Declaration is ill, and the Plaintiff can have no Judgment. Per Hale, the Leafe

The Law of Efectments.

110 Declaration.

Lease is good only for three Years, and the Defendant shall be guilty for no more, else the Plaintiff would recover Terminum predit, which is Five Years, but no Judgment can be for three Years, being not waranted by the Declaration. Trin. 27 Car. 2. B. R. Rowe and Williamson.

Va e ance iiii. Mr. Levett's Case of the Inner-Temple.

Sir Peter Warburton, and others. Desendants.

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Ejectment upon the Demise of John Levett and his Wife, wherein the Plaintiff declares, That John Levett, and Margaret his Wife, the 10th of April, 1697. demised to the Plaintiff, Habend' from the 25th Day of March then last past for five Years.

Argument.
Argued at the King':Bench before Lord Chief Justice Holt,

THIS was tried at the Bar, and a Verdict for the Plaintiff; and the Defendants have moved in Arrest of Judgment, for that the Demise is laid the 10th of April, 1697. which is not yet come, whereas it should be 1696, which the Plaintiff hath moved to amend, and the same ought to be amended, &c. for these Reasons, wherein I shall only apply my felf to the Stat. 16 & 17 Car. 2. cap. 8. which I humbly conceive hath not been sufficiently spoken to in this Matter, which faith, That no Judgments shall be stay'd or reversed after Verdict for any Mistake in the Christian Name, Day, Month, or Year, by the Clerk, where the right Name

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Name, Sirname, Day, Month, or Year, in any Writ, Roll, Plaint, or Record, preceding, or in the same Roll or Record are once rightly named, but that all such Omissions, Variations, Desects, and all other Matters of the like Nature, being not against the Right of the Matter of Suit, nor whereby the Issue or Trial are altered, shall be amended by the Records.

That we are within the Benefit of this Statute, I shall offer this to your Lordship.

The Declaration against the casual Ejector delivered to the Tenants in the Country was right, that expressing the Demise to be the 10th of April, 1696, which ought to have been the Time mentioned in this Declaration, for all the Mistake was only betwixt septimo & sexto; and there is an Imparlance enter'd on the Roll in Easter Term last against the

casual Ejector, which is right.

As in all Actions brought by Bill, the usual Method of Proceeding, is to file the Bill or Declaration in the Office; and as all Defects on the Roll are amendable by that, so this being brought by Original instead of Filing a Bill in the Office, an Imparlance is enter'd on the Roll, and the Method of Proceeding is in the same Manner as in the Common Pleas, the Issue is as much amendable by the Imparlance-Roll as it would have been by the Bill, if the Action had been brought by Bill.

The Objection made to this, is, That pulestone and though Tenants in Possession being not all Goodluck. duly served in the Country, the Tenants spreed to appear so as the Plaintiss would

consent

consent to try it at the Bar, and that thereupon there was a new Declaration delivered, which had this Mistake, and seems to infer, that the former Declaration was waved, and this was altogether a new Proceeding, wherein the Court was misinformed; for there was no new Declaration delivered, and that which the Desendants produced, was a Copy of the Issue only, and proved nothing but that there was a Mistake, which appears by the Roll, and is admitted by the Plaintiff, otherwise we need not this Motion.

Now, my Lord, that the Defendants Appearance was to the Declaration delivered in the Country, is plain; for there was no other Declaration delivered, nor was therein any other for them to appeal to. Befides, it appears by the Rule wherein it is written Pulestone and Goodluck, and under that the now Defendants shall be made Defendants in the Room of Goodluck, and shall confess Lease, Entry and Ouster, for the Lands in that Declaration mentioned, and shall receive a Declaration, and plead the general Issue, and insist upon the Title only; and that if the Plaintiff shall become nonfuit for Default of the Defendants confeffing Leafe, Entry, and Ouster, then that Judgment shall be enter'd against the Defendant Goodluck, &c.

Now, my Lord, I would know what Declaration the Defendants were to appear to; it must be a Declaration against Goodluck: And what Lease the Desendants were to confess; it must be the Lease mentioned in

the

the Declaration against Goodluck; and what Judgment the Plaintiffs were to have, if the Desendants did not confess Lease, Entry and Ouster; it must likewise be upon the Decla-

ration against Goodluck.

Now, My Lord, if the Defendants will shew a Declaration that was delivered them against Goodluck, wherein there was this Mistake, it would be hard upon us; but if they cannot, then the Declaration delivered against Goodluck is right, and the Demise they are obliged to confess, is the Demise in that Declaration, and only mistaken by the Clerk's

transcribing it.

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Now, My Lord, if the Defendants have confessed a good and right Demise, and this hath been tried, then it would be the greatest Hardship in the World, if the Court should not let the Plaintist have the Benesit thereof; and it is plain, that the Demise the Defendants are by Rule to confess, is the Demise in the Declaration against Goodluck. So that, My Lord, if there were no Statute to help it, I take it with Submission, the Court having tried the Fact, ought to make the Record according to the Fact they have tried.

As to their conlenting to appear for several of the Tenants that were not duly served, on Condition the Plaintiff would try it at Bar; My Lord, That is an Argument against them, and brings us within the Benefit of the Case betwixt Crawley and Parr, where there was a Judgment in Ejectment by Consession, and the Demise laid after the Judgment, and amended after a Writ of Error brought, because it was a Judgment by Warrant of Attor-

ney

ney; for it should not be supposed that the Desendant gave a Warrant of Attorney to

confess a void Judgment.

Now, My Lord, the Defendant's confenting to appear, shall never be intended to avoid Declaration, but to a good Declaration in order to a fair Trial. And, My Lord, we are the more intitled to the Benefit of it, because we are Purchasors, for we give a Consideration for it, viz. agreed to try it at Bar, and they themselves opened it so.

As to what was objected, That when the Tenants have appeared to this Declaration in Ejectment, and are made Defendants, it is a new Action, and that the Declaration against the casual Ejector is rejected, and that therefore this Desect cannot be amended, though right in the Declaration against the casual

Eiector.

I give this Answer, That the Declaration against this casual Ejector is not rejected, but is by the common Rule in Ejectment made Part of the Caule, infomuch that if the Plaintiff be nonfuited, he shall have his Judgment upon that Declaration, and the Return of the Postea is Warrant for that Judgment; so that by the common Rule in Ejectment they are so tied together, that it is all but one Action, and the now Defendants are to fland in the casual Ejector's Place. But, My Lord, the Words of the Statute are not so strict, which are in any Proceedings precedent. Now, My Lord, the Declaration in Ejectment is a Proceeding, and it is Precedent, and it is within the equitable Meaning of the Statute, which intends all Amendments

that are by Neglect of the Clerk, if it appears that they are right in any of the Proceedings, and for that End a Philizer's Note, tho' no Part of the Record, hath been sufficient

to amend by.

And, My Lord, the same may be said when the Defendant is arrested by a Lat. de Placito transgr', and the Plaintiff declares in Debt or Case, and mistakes the Christian Name, Sirname, whether shall it be amended by the Lat. and whether the Lat. shall be looked upon to be a Proceeding precedent to the Declaration, because in another Action, and so it would be if a Man be arrested de Placito transgr', ac etiam Bill', and the Plaintiff declares in Debt only, this is likewise departing from the Writ; but these are warranted by the Practice and Course of the Court, these Processes being made use of only to force an Appearance; and the Plaintiff may then declare in case of Trespass or Debr, as he fees good. Now, My Lord, Declarations in Ejectment are the same Thing, because only made use of to force an Appearance, and are by the common Rule in Ejectment become no Part of the same Action than a Lat. is. But this, My Lord, we have a full Answer to; for the Declaration against the now Defendant is entred on the Roll, and is right.

But with Submission, My Lord, the Declaration is sufficient to warrant its own Amendment, it being by Original, viz. Que Johan Levett & Maria eidem Rogero dimiser' ad terminum qui nondum præteriit, intraver' & ipsum

à firma sua prædicta ejecer'. Now, My Lord, the Count may be amended by the Original, which is, That the Plaintiff's Lessors had before that Time demised the Premisses to the Plaintiff for a Term not then past; and if the Count be made of a Demise then in being, it is all the Amendment we desire. But, My Lord, here it may be objected, When must that Demise bear Date and commence? Must the Court set a Date and Commencement to Plaintiff's Demise?

To which I answer, That the Commencement is certain by the Declaration, videlicet, from the 25th of March last, and that must be the 25th Day of March last before the Term the Issue is entred on, which is from 96, and then the Date of the Demife must be betwixt Trinity Term, 96. and the 25th of March before, which points direct. ly at the Mistake which is in Michaelmas. If the 10th of April 1697, instead of 1696, and where the Court can by the Record take Notice what was intended; it is the same Thing as if it had been once rightly named before, and is within the Meaning of that Statute, which after the naming of many Mistakes, hath these general Words, and all other Mistakes of the like Nature, which, My Lord, must be of no Signification, if this be not the Meaning of this Statute.

And, My Lord, as to this being the Fault of the Clerk, I need no Argument to prove it, for the Matter shews it self; and the Declaration against the casual Ejector being right, proves this the Fault of the Clerk in

tran-

transcribing this Wrong, though the Declaration may properly be said to be the Act of the Client, yet that shall be intended the Declaration against the casual Ejector, that being the First Declaration, and all that is necessary for the Client to instruct his Attorney in, the rest only depending on the Forms and Practice of the Court, wherein the Attorney needs no surther Instructions from his Client.

Now, My Lord, I do admit that the general Words in this Statute are restrained; that is to say, All other Matters of the like Nature, not being against the Right of the Matter of Suit, nor whereby the Issue or Trial are altered. But, My Lord, this Restriction hath no Relation to the particular Defects that were mentioned before, whereof ours is one, but to the general Words only; and, My Lord, we are within the Intent of these general Words also.

For this Amendment is not against the Right of the Matter of Suit; for that was whether the Plaintiff's Lessor had a Title, and that hath been tried and found for the Plaintiff; nor is the Issue or Trial altered; for had this been amended before Trial, the Defendants must have pleaded the same Plea, and the Trial would still have been the same. The Danger only was at the Trial on the Plaintiff's Side, whether this was not Caufe of a Nonsuit, and therefore it was his Business to have it amended before Trial, for fear of being nonfuited at Trial; but having tried his Cause, and the Right found with him, he is much more entitled to the Benefit of I 3 this

verdict; Nav, My Lord, a Verdict that was found according to the Right and Merits of the Cause, which all Courts have always been very tender of

Laftly, My Lord, I shall offer this to your Lordship, That the Matter we pray to amend, is not Matter of Substance, yet ought to be

amended to avoid Absurdity.

I must confess, That if this had been a Demise to commence in Future, it would have admitted of a greater Argument; but, My Lord, this is a Demise in being at the Time of the Declaration, and not yet expired, and so

much appears by the Record.

My Lord, the Record is an Issue of Trinity Term, 1695, and the Demise is laid the 10th of April, 1697. Habend' from the 25th of March then last past, and the Words in the Declaration are Demiser' in the Writ, and Demission in the Count; and that the Plaintiss entred by Vertue thereof, and was possessed, and the Desendant ejected him, his Term being not ended, &c. all which the Desendant consesses.

This Demise must be before Trinity Term 96. or else the Words Demiser', Demisssent, are to no purpose; and it is impossible that before Trinity Term 1696, the Plaintiss's Lessons should have demised the 10th of April 1697, for that Time was not come. But it is possible that the 10th of April, 1696, the Plaintiss's Lessons might make a Lease dated the 10th of April, 1697, before the Time of the Date.

And

And if that be the Construction of it, then this is a Deed from the Time of the Execution, and the Term commences from the 25th

Day of March before.

Or else this being an impossible Date, must be altogether rejected, and then Trinity Term and the 25th Day of March being all the Times that are certain in the Declaration, the Confession is, that betwixt the 25th Day of March, 1696. and Trinity Term following, the Plaintiff's Lessors demised, the Date being no effential Part, and then this is a good Demise for Five Years from the 25th of March, 1696.

Greater Mistakes than these have been

amended after Verdict.

Lees and Sir Nathaniel Curson, Bart, in Mich. laft. Ejectment, wherein the Plaintiff's Leffor being an Infant, the Declaration was, That the Infant demised by his Guardian, which was no Demife, and the Cause being tried at Staff. last Summer Assises, the Defendant's Council infifted on the Mistake, and relied thereon, and it being referred by Confent to the Judge, and a Verdict given for Security, the Judge referred the Matter to the Court of Common-Pleas, who amended it, though never right in any of the Proceedings.

The Bishop of Worcester's Case in this Court, 15 Car. 1. where there were Five Defendants and but Haftefoot and Three of them pleaded, and after Verdict Verdict the amended, and the Verdict was recorded against Day in Re-Two, That no Issue was joined against in the cord is alter-

Record of Nifi-prius.

ed after Verdia.

The Law of Ejenments.

14 Car. 2.

dring upon the Statute of Hue and Cry, where it was ordered, That the Record both of the Declaration and Issue should be amended by the Attornies, and this was before Trial.

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Ours is a far stronger Case; for this Amending, if it had been before Trial, would not have altered the Issue, or any-wise influenced

the Merits of the Cause.

Now, My Lord, we are intitled to the Favour of the Court, in respect we moved this Matter before Trial, and were bid by the Court to move it aftewards; and if this had been a fatal Matter, the Plaintiff ought to have been nonfuited, which was then infifted on by the Defendants, and denied; and fo the Plaintiff exposes his Title, paid the Charges of the Jury and other Things, which cost him above 1001. and if he had been nonfuited, was by Rule but to pay Country Costs, and the Plaintiff's Lessors are Purchafors for a valuable Consideration under a Title of above Sixty Years Possession. And having now upon a fair Trial and a full Evidence obtained a Verdict, we hope your Lordship will put them in a Capacity of Reaping the Fruit of it.

The Judgment in Ejectment is double, one as to his Damages, upon which the Costs are attendant, and the other as to the Term whereupon his Possession depends; and the Plaintiff may take out Two Executions, one for his Costs, and the other for his Possession. Now if there be Cause to stay the Possession, where is more Cause to stay Judgment as to Damages

Damages and Costs, because the Issue hath been fairly tried, and the Defendants have confessed that the Plaintiff was in Possession. and that the Defendants did eject him; now if his Term was not commenced, but his Possession tortious, yet he is not to be turned out by a Stranger that hath no Title, as the Defendants were, the Jury having found against them, and the Damages are for the Entring upon our Possession and ejecting

But the Court faid it could not be amended, and Mr. Levett brought a new Trial and recovered.

Declarations, when amendable or not.

IN Ejectment where the Title is material, Declaration the Plaintiff amended his Declaration after amended af-Plea (but while all was in Paper) in the without pay-Date of his Action, without Costs paying ing Costs. 1 Keb. 14.

ration cannot be amended, for that might and Judgattaint the Jury: As in Ejectment of the ReAmendment
dory of H. and other Tenants, virtute cuof a Declarajus intravit in Tenementa prædicta. Verdict tion. and Judgment de Rectoria & Tenementis pradict', it cannot be amended; but on such Aliter in Omission in Judgment or Acts of the Court Judgment it were amendable, but not of the Declara- the Court.

tion. But in this Case the Court conceived it well enough, and that the Word Tenements [Tenements]

After Verdict and Judgment the Decla- After Verdict

in- include a Re-

includes a Rectory, whether there be Glebe or not, but not so of a Manor, Hill. 25 & 26

If the Plaintiff in Ejectment declare of an

House lying in Two Parishes, if the House

do lie in either of the Parishes, and do not lie

in both of them, yet the Declaration is good;

for there is Certainty enough in it. Pract.

Car. 2. Bale's Cafe.

Reg. 110.

Declaration of an House lying in Two Parishes, and the House lies in one, it's good.

It must be alledged in what Vill the Tenements are.

It must be alledged in what Vill the Tenements are; the Plaintiff declares, that P. C. by Indenture apud F. let unto him one House and Twenty Acres of Land, by the Name of all her Tenements in S. Per Cur', the Declaration is not good, because it is not alledged in what Vill the Tenements are; for the naming of the Vill in the Pernomen was not material, and so Cro. El. 822. Gray and Chapman.

Where the Pernmen is not good.

The Plaintiff declares of a Leafe of one Messuage, Ten Acres of Land, Twenty Acres of Meadow, Twenty of Pasture, by the Name of one Meffuage, Ten Acres Prat. be it more or less; after Verdict a Nil cap. per Billam was entred: For upon the Matter by the Plaintiff disclosed in his own Declaration, he cannot have Execution of the Quantity found by the Jury: For in the Lease there is not but Ten Acres demised, and these Words in Judgment of Law cannot be extended to Thirty or Forty Acres, and the rather because the Land demanded by the Declaration is of another Nature than that mentioned in the Pernomen; for this goes only to the Meadow, and the Declaration is to the Arable and Pa-Sture. Telv. p. 166. In

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In this Action it was moved in Arrest of Judgment, That the Plaintiff had declared of Two Demises, (viz.) that F. S. demised Ten Acres of Land to him, and that 7. N. had demised Ten other Acres of Land to him, Habend, for the Term of Five Years, Oc. and that he entred into the Premisses demised to him by 7. S. and 7. N. in forma prædictas After Verdict, upon Not guilty for the Plaintiff, it was objected, That in one of the Demises there is no certain Term or Estate; for the Habend' can only be referred to the Demise of F. S. for that begins a new Sentence; but per Cur', the Habend' hall be a good Limitation of both Demises for Five Years, and when it is shewed that the Plaintiff entred into the Premisses demised to him in forma pradieta, That is an Averment that all was demi- Forma pradict' fed to him, for that it is forma prædicta, how con-2 Ventr. 2 W. & M.

strued.

In Ejectment the Plaintiff need not count Declaration of the Demise of more Acres than the need not be Acres out of which he was ejected; and a of more Acres Demise may be pleaded of any Parcel with ejected. out mentioning the Entire; as if one demise to me Two Acres for Term of Years, and I am ejected out of one Acre by a Stranger: Now I shall have Ejectione Firme, and count that one Acre was demised to me, without any Mention of the other Acre. I Saunders p. 208.

Where one declares on a fictitious Leafe One fictitious to A. for Three Years, and within the same Lease to A. Term declares of another fictitious Lease to to B. the same B. of the same Lands, the last is not good; Term, the for Trespals for the mean Profits must be last is not

brought good.

The Law of Ejeaments. 124

brought in the First Lessee's Name, ut dicitur.

As to the Form:

Eject ment was against Two, and the Decla-Declaration against Two, ration was intravit & expulit; and it was expulit. amended Telv. 223.

The Omission of Vi & Arclaration.

Vi & Armis are left out in the Declaration. Cro. El. 340. Griffith and Williams's Case, saith mis in the De- it is but Matter of Form, and it is helped after a Verdict; but in Cro. Fac. 36. and Telv. 223. in Odington and Darby's Cafe, where Vi & Armis was lest out, and Error was brought in the Exchequer-Chamber, it was not suffered to be amended, but Judgment was reversed. So Godb. 286. and so in Sykes and Coke's Case, the Want of Vi & Armis is not helped by a Verdict; but in Error in B. R. if upon Diminution it be well certified, the Court will amend it. Godb. 286. 2 Bulftr. 35. Cro. Fac. 206. Telv. 223. Odington and Darby. I Keb. 164.

In B. R. the Transcript of Trespass and Ejectment was De Placito Transgressionis & Eje-Etionis, omitting Firme, it was amended. And in B. R. it would be amended in the Record

it self before Removal. 1 Keb. 106.

The Omission of Extratenet in the Declaration.

Exception was taken in Godb. 60, 71. because the Plaintiff did not say in his Declaration Extratenet; but per tot' Cur', those Words were not material; for if the Defendant do put out the Plaintiff, it is sufficient to maintain the Action. So if it be à possessione sua ejecit, instead of a firma sua ejecit, it's good; for ejecit à possessione inde, inde hath relation to the Farm. Gudb. 60, 71.

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In Ejectione Firme, the Writ and Declaration were of Two Parts of certain Lands in H. and faith not, in Two Parts in Three Parts to be divided, and yet it was good as well in the Declaration as the Writ; and this Difference was taken per Cur' by Intendment and Construction of Law, when any Parts are Demand of a demanded without shewing in how many Part, without Parts the Whole is divided, that there re- how many mains but one Part not divided; as if Two Parts divided. Parts are demanded, there remains a Third Part; and when Three Parts are divided, there remains a Fourth Part: But if any Demand be of other Parts in other Form, there he ought to shew the same specially, as if one demands Three Parts of Five Parts, or Four Parts of Six, &c. 13 Rep. 58.

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Declaration in Ejectment is, Quod cum such Declaration an one Dimisit, it's good here, because he with 2 word cannot have the Action without a Lease; but cum, is good, Trespass, as Assault and Battery, &c. it is not not so in And Dodderidge took this Difference, Trespass. Where the Thing on which the Action is brought, hath Continuance, and where the Action is brought for a Thing done and past. In Ejectione Firme there the Leafe hath still Continuance, and there such a Declaration with a Quod cum, is good, because it is in the Affirmative; but where the Thing is past, as Battery, it ought not to be with a Quod cum,

2 Bulftr. 214. Sherland's Case. As for the Manner of Declaring in respect of the Thing demised, vid. supra, tit. Of what Things an Ejectment lies: To which I shall add one Case in the Exchequer.

ment

De Herbagio.

not include

ment for fo many Acres of Meadow, and fo many Acres of Pasture, on Non culp' the Jury find a Demile de Herbagio & Pannagio of fo many Acres. Per Cur', by the same Reason that an Ejectment lies of a Leafe of Herbage, by the same Reason the Plaintiff ought to declare accordingly; and Herbage does Herbage does not include all the Profits of the Soil, but only Part of it. Hardr. 330. Wheeler's Case in

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all the Profits Scaccario. of the Soil. The Form of a Declaration from a Parson, of Rectory and Tenements in B. R. with an Averment of the Parson's Life. 1 Rep. 149.

> The Form of a Declaration in Ejectment in the Common-Pleas. Mich. 16 Car. 2.

Tempest.

Chedington's Cale.

23. nuper de London Ben · attachiat fuit ad respons bend WI. I. be prito quare Di & Armis unum Beffuagium u um Bardis num decem acras terre tres acras plas ti & quatuoz acras paffure cum pertinentits in B. que S. W. vid cidem 10. dimisit ad terminum qui nondum pres teriit intravit & ipsum a firma sua predict ejecit & alia enoemia ei intulit ad grave damnum ipfins 10. & contra pas cem Dom Regis nunc, Ec. Et unde idei

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idem 10. p J. S. Attornat fuum queritur go cum predict S. primo die Oaobeis Anno Regni Dom Regis nune quinto decimo apud D. predice bimifit prefat 10. Tenementa predicta cum pertin habend eid 10. & affignat luis a festo Sanai Michaelis Arche angeli tune ultimo pzeterito ulog finem & terminum quinos annozum ertunc prime fequen & plenarie complend & finiend virtute cuius dimidionis idem W. in Tenementa predicta intrabit & fuit inde poffessonat. Et sic inde polfemonat exiften predict M. poftea fci= licet cod primo die Onobrig Anno Reani dict Dom Regis quinto decima supradico Di & Armis, Ec. in Tenes menta poida cum pertin que poict S. Mat 10. in forma poicta dimist ad terminum poict qui nondum pzeteriit in= travit & iplum a firma lua poida ejecit ac alia enoimia, Ec. ad grave dams num, Ec. & contra pacem, &c. Unde dicit quod beteriozat eft & damnum het ad valentiam becem Libzarum & inde pduc Sedam.

Et poict A. p G. I. Attomat luum ben & befend bim & injuriam quando,

tc. U. No. ulog Odab Billarij.

In the King's-Bench.

Ware ff. T D. queritur de Jacobo · Ill. in custod Marr Ma: rele Dom Regis cozam iplo Rege eris ften p eo videlt quod cum . D. 99. Ben ultimo die Januarii Anno Dom nostri Caroli secundi nunc Regis Anglie, &c. vicelimo, apud B. in Com predict dimiffet concelliffet & ad fir: mam tradidiffet Pfato T. unum Deffuagium & duas Acras Pafture cum per tin seituat jacen & eriften in 25. predict habend & tenend tenementa poica cum pertin prefato C. & affignat fuis a vicelimo quinto die Decembris tunc ult pterit ulo plenum finem & termi, num quing annozum extune prime fequen & plenat & finiend complend bir: tute cujus quidem dimissionis idem C. in tenementa pdida cum ptin intrabit E fuit inde possessionat quoulog poict Jacobus pofrea feitt eodem ultimo bie Januarij Anno Regni dict Dom Res gis nune vicefimo supradict Di & Armis, &c. in tenementa poica cum pertinen in & luper possellionem ipaus C. inde intravit & ipsum C. a possessione sua predict termino suo poict inde non: dum finit ejecit expulit & amobit ip: fumo T. a possessione sua poiet extratenuit & adhuc extratenet & alia enoz mia ei intulit contra pacem dict Dom Regis nune ad damnum ipfius C. 20 l. Et inde pouc Sedam, Ec. In

In the Office of Pleas in the Exchequer.

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Derh ff. A. B. dehitor Dom Regis A. nune venit cozam Baronibus hujus Scaccarij duodecimo die Februarij hoc Cermino p C. D. Attozid suum Egueritur p Billam versus E. F. pseuc hie in Curia eddem die de
psito Cransgressonis & Ejectionis Firme pro co videlt qo cum quidam J. B.
secundo die Feb Anno Kegni diet
Oni Kegis nune vicesmo primo apud,
Ec. (pur supra in B. K.) ad damnum ipsius A. decem Librarum Quo
minus, Ec. Et inde producit Scaam,
Ec.

A Copy of the Declaration you must leave with the Occupier of the House and Land, with this or the like Indorsement:

James B. you may perceive that I am fued for the Messuage and Lands within mentioned, being in your Possession: These are therefore to desire you to desend your Title, or else I shall suffer Judgment to be entred by Desault.

Or thus:

UNless the Tenant in Possession, or they under whom he claims, do next Trinity Term appear to this Declaration, and make him or themselves Desendants thereunto, and by Rule of Court confess the Lease, Entry

The Law of Ejeaments.

Entry and Ejectment, and infift only upon the Title at the Trial, the Defendant in this Declaration will confess Judgment, and Possession will be delivered accordingly to the Plaintiff, and you turned out of Possesfion.

Your Friend I. D.

To A. B. Tenant in Possession of the Premisses within mentioned.

To this the Tenant may appear by his Attorney, and confent to a Rule with the Plaintiff's Attorney, to make himself Defendant in the Room of the casual Ejector, and to confess Lease, Entry and Ouster, and at the Trial to fland upon the Title only; or in Default thereof, Judgment will be entred against the casual Ejector.

If the Tenant in Possession do not appear in due Time, and enter into a Rule, as is aforesaid, then upon Affidavit made of the Service thereof, and Notice given him to appear, the Court upon Motion will order Judgment to be entred against the casual Ejector; No Judgment for if the Defendant plead nothing to this against the ca- Action, but let it pass by Nibil dicit, the Judgment cannot be had upon a common Rule, as in Actions of Debt, and fuch like, but by Motion of the Court, because it is to alter

Possession.

fual Ejector but by Motion of the Court.

What is to be Declaration. delivered.

After the Declaration delivered, the Perdone after the fon whole Interest is concerned, ought to retain an Attorney, who is to give his Client's Name

Name to the Plaintiff's Attorney, that so he may be made Desendant instead of the casual Ejector; and then a Rule is to be entred by Consent, as follows:

Robinson. Pas. 15 Car. 2. Regis.

D. versus M. in Ejectione Firme de Terris & Tenementis in H. in Com' M. ex dimissione E. P.

Adinat eft p Curiam er affensu 3.1). Actornat quer & I. H. Attor: nat p T. W. de W. in Com E. pbick Beom quod idem C. admittatur defen= dens qui indilate comparebit p Attorn hum phict & recipiet narrationem & plitabit adinde generalem exitum hoc Termino & ad Triaconem superinde has bend idem T. comparebit in ppzia perfona fua aut p eius Concilium vel At= Et cognofcet dimissionem intrationem & aqualem expulsionem bet quod in defeau inde intretur indicium verlug Def. G. M. casualem Gjeaorem fed parcatur ulterioz profecutio berfus eum quoulo poict C. in aliquo pmiffo= rum defalt fecerit. Et er consimili als fensu ulterius ordinat est per Cur quod poict T. millum capiet advantagium verfus querent p ejus non psecutione fuper Triatione occasionat p hujusmodi defaltant fed quod poict T. folvet que: renti custagia Prothonotal pinde tars and. Et ultering ordinat eft quod bimillo:

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missoz querentis sit onerabilis cum solutione custagiozum desendent per Cur aliquo modo tarand bel adjudicand.

The like in B. R.

Die Lune prox' post Crast' Ascensionis Domini, 23 Car. 2. Regis.

Adinatum eft er affensu ambarum partium & cozum Attoznat ab 10. D. qui clamat titulum Meffuagio in questione fat Def. & compebit indilate ad Sect que: & impon commune Ballium & recipiet narrationem in plito Transgrellionis & Gjectionis firme & plitabit adinde non culp & fuper triatione exitus coan dimission intration & adualem Cicaionem & Stabit Super titulum tantum alit judicium intretur per defale berfug modo querent. Et fi Poict W. 1). Aper triatione exitus illing non cognole dimission intracon & adual ejed' p qu quer plequi ulterius non poteit quod tune nut mis fibe cufrag fuper tali non pros adjudicentur. Et ulterius ordinat eft qu' fi beredict redditum fuerit p poict W. D. bel pee: Dict quer non prog foret ppter aliquam aliam causam p am non coanose dimis how intracon & adualem ciedionem p dict quod tune le Leffoz quer folveret talia cuftag CU. D. Del' qualia p Cur adjudicata fuerint p Cur.

An Affidavit in Ejectment to move for Judgment against the casual Ejector.

Inter SA. S. Quer' de Terris & Tenementis in R. in Com' H. ex dimif-B.C. Def'. Sione J. H.

T. S. maketh Oath, That he this Depo-nent on Thursday the —— Day of - last past, did deliver unto J. D. Tenant in Possession of the Premisses in Queition, a true Copy of the annexed Declaration, with an Indorfement or Superfcription thereupon, to this Effect, viz. J. D. You may perceive by this Declaration, that I am sued as Casual Ejector for the Land and Tenements, within specified, in your Possession (whereunto I claim no Title); I do therefore hereby give you timely Notice, that unless you appear and defend your Title this next - Term, I shall suffer Judgment to pass against me by Default, whereby you will be turned out of Possession. Your Loving Friend, C. R. Dec. 12. 1679. Which said Indorsement or Superscription this Deponent did then read to the faid T. D. and acquainted him with the Contents thereof.

Note, It is good Service to deliver the Copy to the Wife, or to the menial Servant of the Tenant in Possession. If to the Wife, thus, (viz.) I did deliver to Anne the Wife; or, if to the Servant, to R. W. the bired Servant of J. D. and desired her to acquaint her Husband therewith; or him, his Master, therewith.

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The Law of Ejetments.

If there be Two Tenants, then say, I did deliver one Copy of the annexed Declaration to A. R. Tenant in Possession of Parcel of the Premisses in Question; and another Copy thereof to C. D. Tenant in Possession of the Residue of the Premisses in Question; upon which said several Copies was subscribed or indorsed to this Effect, &c. Which said several Indorsements, he the said Deponent did read to the said several Tenants, &c.

CHAP.

CHAP. VIII.

Of Pleadings in Ejectment. What shall be a good Plea in Abatement in this Action. Entry of the Plaintiff banging the Writ. Entry after Verdict, and before the Day in Bank. After Imparlance no Pleading in Abatement, and why. Death of the Lessor banging the Writ. Death of the Lessee before Judgment. Abate, because he shews not in which of the Vills the Land lies. Ejectment against Baron and Feme; Baron dies since the Nisi-prius, and before the Day in Bank. Of Pleading to the Jurisdiction. Conisance not allowable on Suggestion, but it must be averred or pleaded. How Prescription to the Five Ports to be made. Ancient Demefne, a good Plea in Ejeciment, and why. Of Plea of Ancient Demesne allowed the same Term, and how. Of Pleas Puis darrein Continuance. Entry Puis darrein Continuance pleaded at the Assizes is reasonable; the Consequence of a Demurrer to this Plea. Release from one of the Plaintiffs in Writ of Error, whom it (hall bar. Accord with Satisfaction pleaded in Ejectment. Aid Prier, and why the Defendant shall not have Aid of the King; aliter of a common Person: But a Writ not to proceed Rege inconfulto allowed. Recovery and Execution in a former Action pleaded in Bar. Bar in one Ejectione Firme, bow a Bar in another.

THE General Issue in Ejectione Firme, is now settled by Rule of Court to be, K 4

The Law of Ejenments.

Not guilty, tho' formerly the Defendant might have pleaded Non ejecit, or any other Title; and therefore tho' this Chap. 2. may feem needless, because by the new Practice, upon Not guilty pleaded, the Title is only to be infifted on at the Trial, yet in some Cases special Pleas may and ought to be pleaded in Ejectione Firme, especially in inferior Courts, which I shall first treat of, and then give a little Touch as to the special Pleading formerly in Use in this Action, that so the Reader may not be totally ignorant thereof. But first,

What shall be a good Plea in Abatement.

That the Plaintiff had another Ejectment depend-109.

Per Cur', It is a good Plea in Ahatement of Ejectione Firme in B. R. That the Plaintiff had another Ejectment for the same, depending in the Common Bench. Moor p. 539. Digby and Vernon.

Action commenced, and pires pendent the Suit.

In Ejectione Firme, if the Term be expired before the Action brought, the Writ shall abate, the Term ex- because he ought to recover the Term and Damages; but if he commence the Action before the Term expire, and it expires pendent the Writ, there it shall not abate, but he shall recover Damages. Dyer 226.

Entry of the Plaintiff hanging the Writ.

Entry of the Plaintiff hanging the Writ, shall abate the Writ,

Death of the Lessor hanging the Writ, doth not abate the Writ: Agreed by G. Crook, in Banifter and Eyre's Cafe, Mic. 18 Fac. B. R.

But the Death of the Lessee before Judge ment abates the Writ.

In Williams and Asher's Case, the Desendant would have pleaded Entry after the Verdict in Entry after Abatement of the Writ, but it was held clear- the Verdict. ly he had not Day to plead it, but it is put to Day in Bank, his Audita Querela. But in Parkes and Johnson's is not Error. Case, in Excetione Firme the Error affigned was, That the Plaintiff after Verdict, and between the Day of Nisi prius and the Day in Banco, had entred, whereby his Bill was abated, and demurred thereupon: Per Cur', this cannot be affigned for Error, for it proves the Bill is abateable, but is not abated in fait; neither is it material to affign it for Error, for upon fuch Surmife which goes only in Abatement, the Judgment shall be examined. Cro. El. 181. Asher's Case, Cro. El. 757. Parks and Fobnion.

The Plaintiff declares of one Messuage and Abate, be-Forty Acres of Land in Scone. The Defendant cause he imparls till another Term, and then pleads, which of the That within the Parish of Stone are Three Vills, Vills the A. B. and C. and because the Plaintiff does not Lands lie. shew in which of the Vills the Lands lie, he demands Judgment of the Bill, & quod ob caufam prædict' Billa prædicta cassetur. The Plaintiff demurs, and adjudged for him. For, 1. After Im. After Imparparlance the Defendant may not plead in lance no Abatement of the Bill, for he had accepted it Abatement, to be good by his Entry into Defence, and by and why. his Imparlance. 2. The Matter of the Plea is not good, because the Desendant does not shew Wherea Man in which of the Vills the Meffuage and Forty pleads in A-Acres lie. And where a Man pleads in Abate. batement, he ment, he ought to give the Plaintiff a better ought to give Writ, aud upon Demurrer there shall be a Re- to the Plain-Spondeas Ouster. Yelv. 112. Tomson and Collier.

and before the

fhews not in

After

Ejectment and Feme; Baron died fince the Nifiprius, and before the Day in Bank, the Action continued against the Wife.

After Verdict for the Plaintiff (the Question against Baron being brought against Baron and Feme) that the Husband was dead fince the Nisi-prius, and before the Day in Bank; and whether the Bill should abate in all, or should stand against the Feme, was the Question; and because it is in Nature of an Action of Trespass, and the Feme is charged for her own Fact, it was adjudged that the Action continued against the Feme, and that Judgment should be entred against her fole, because the Baron was dead, Cro. Fac. 356. Rigley and Lee.

Where the Plaintiff by his Demand confesseth the Writ abateable.

Ejectione Firme by J. S. against N. and O. N. appears and pleads the General Issue, and Process continues against the other until he appears, and then he appears and pleads an Entry into the Land puis darrein Continuance. Judgment de Brev'. The Plaintiff upon this Plea demurs in Law, Curia advisare; and in the Interim the First Issue was found pro Quer' versus N. and the Plaintiff prays his Judgment. He shall not have it, because the Plaintiff by Demurrer in Law had confessed the Writ abateable; and the Writ by the Entry of the Plaintiff was abated, in as much as the Term is to be recovered. Dyer 226. Nevill's Case.

To the same Purpose is the late Case of Boys

and Norcliff.

In Ejectione Firme the Question was, If the Entry into the Land after the Day of Nisi prius, and before the Day in Bank, may be pleaded in Abatement; and if such Entry, puis darrein Continuance, be a Plea in Abatement? Note, this was in Error out of the Common-Bench, and held by the Court of the King's-Bench that it is not Error, yet Entry will not revive

the

the Term, because it's only in Abatement, and there is a Diversity between this and Death. 1 Bulftr. 5. And it's usual if the Entry Entry before be before the Nisi-prius, to plead such a Plea the Nisi prius, at the Assizes, and if it be omitted, the Adat the Assizes. vantage is loft; but not fo in case of Death: Difference By Death the Writ is actually abated, there between Enbeing no Time to plead it in Court, but En- try after Vertry must be pleaded puis darrein Continuance in diet, and Abatement only. Sid. p. 238. Boys and Norcliff. Death. 1 Keb. 841, 850, mesme Cale.

Shall not abate by the Death of the Leffee.

Vid. 3 Keb. 772.

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Not abate by the Death of the Leslee.

Of Pleading to the Jurisdiction: Conisance of Plea. bow to be demanded and allowed, and bow pleaded.

This Plea was formerly allowed of, and fo is Itill in some Cales.

Now every Plea which goes to the Jurisdi- Regula, for a ction of the Court, ought to be taken most Plea to the frong against him that pleads it; and to this of the Court.

Purpose there is a pretty Case.

In Ejectment the Plaintiff declares of a Lease Al' Jurisdict'. made at Haylsham; the Defendant pleads, That Haylsham prædict. ubi tenementa jacent, is within the Cinque-Ports where the King's Writ runs Cinque-Ports. not; and so he pleaded to the Jurisdiction of the Court. The Plaintiff reply'd, That the Town of Haylsham was within the County of Suffex, absque boc, That it was within the Cinque-Ports. The Defendant demurs, because he ought to have traversed absque boc Traverse. quod Villa de Hayisham ubi tenementa jacent, is within the Cinque-Port; for the Truth was, it was Part in the Cinque Ports, and Part in

the County of Suffex, and the Land lies in the Part which is in the Cinque-Ports; but per Cur', the Traverse is good, and the Bar is naught. The Defendant in his Bar ought to have made his Distinction, and every Plea which goes to the Jurisdiction of the Court, ought to be taken most strong against him that pleads it, and the Traverse here ought to be to the Town, and not to the Ubi, which was idle; for the Law faid as much, and we do not imagine any Fractions of Towns, Winch p. 113. Auftin and Beadle. Cro. fac. 692. mesme Case. Hutton p. 74. mesme Case.

Note, He who would demand Conisance of this Plea, ought to shew his Warrant of Attorney in Latin, Sid. 103. in the Bishop of Ely's Case.

The Attorney General in Hales and Full's

Case prayed Allowance of the Plea, That the Lands in the Ejectment were within the Cinque-Ports. Cinque-Ports, which the Court granted, there being no Imparlance General or Special, both which affirm the Jurisdiction of the Court; and at the Venire fac? the Plaintiff may fuggest the Lands to be within the Cinque Ports, and have it of Places adjacent within the County.

I Keb. 65.

to.

allowable on Suggestion, but it must

It must be averred or pleaded, and may be after Imparlance in Gjeldment.

Ely.

Record.

Sir Edward Turner in Ejectment, ore tenus, Conisance not shewing his Warrant of Attorney, demanded Conisance for the Bishop of Ely; per Cur', it's not allowable on Suggestion, which is Cinquehe averred on Ports, Ancient Demesne, &c. It must be avered on Record; for tho' the Court takes Notice that Ely is a Royal Franchife, yet this must be fo averred or pleaded, and may be after Imparlance, when any Third Person is concerned fince the new Way of Ejectment used in

Green

Green and Simpson's Case; but Siderfin is contra. That it cannot be pleaded after Imparlance,

1 Keb. 946, 948. Sid. 102.

The Defendant prayed to be admitted to Where Coniplead in Abatement, That the Lands in the fance of Plea Ejestment are within the Cinque-Ports, and not allowed the rather, for that he was made Defendant ment. by the Rule of Court, with a special Imparlance; (with a Salvis omnibus, &c.) Per Cur', let him plead in Chief, unless in Ancient Demesne no special Plea has been allowed, because the Lord would be prejudiced in a Trial at Common Law. 1 Keb. 725. Hale and Up-

pington.

In Hall and Hugb's Case in Ejectment of Part within Lands, part within and part without the Five and part Ports, the Desendant, after Imparlance, pleads without the Cinque-Ports, in Abatement, That part of the Lands are in and demur. the Five Ports, and so prays Judgment, si Curia cognoscere velit, &c. The Plaintiff demurs. because it does not appear but that the Demise was out, and it's transitory, and may be laid any where, tho' the Leafe was actually fealed in another Place or County; and the Defendant may plead Non dimisit, as well as Not Where Non guilty. The Demise in this Case was laid at dimistic plead-Maidstone; per Twisden, this being an inserior ed in Eject-Court, they cannot try the Demile, which is issuable, and the great Mischief that came in Whythenew Want of Proof of the Demile, was the Cause Rule of conof introducing the new Rule. In this Plea it felling Leafe was faid, That the Lands were in F. Parcel of was introduthe Cinque Ports, where Time out of Mind the Writ of our Lord the King runs not, and that they of F. have always tried, &c. This is ill, for the Prescription should have been annexed

of in Eject-

Prescription must be to the Five Ports, and not to F. only.

nexed to the Five Ports generally, and not to F. only; and the Court ordered him to plead in Chief, and to confess Lease, Entry and Ouster, or else that the Plaintiff take Judgment against his own Ejector. 2 Keb. 69, 79.

1. Whether Ancient Demesne pleaded, be a good Plea? 2. Whether it may be pleaded after Imparlance?

cient Demeine a good Plea in Eiect. ment, and why.

In Cro. Car. 9. it was a Question, Whether Formerly an- Ancient Demelne may be pleaded after Imparlance? It's resolved, That Ancient Demesne is a good Plea in Ejectione Firme, and in Replevin; tho' it was doubted in our Books formerly, but that is fully fettled in feveral Reports. In Alden's Case, 5 Rep. the Defendant pleads. That the Tenements in which, &c. were parcel of the Manor of O. in Com. S. Quod quidem Manerium est de antiquo Dominico. &c. and demands Judgment, si Curia bic vult cognoscere, &c. The Plaintiff demurs, and per Cur' it is a good Plea: 1. Because it's the common Intendment that the Right and Title of the Land will come in Debate in this Action. 2. In this Action the Plaintiff shall recover the Possession of the Land, and have Execution by habere fac' Possessionem, and this Action favours of the Realty. So in Pymmock and Feilder's Cafe, where the Pleading was nice; the Defendant pleads that the Lands were Ancient Demefne, and pleadable by a Writ of Right, Close, &c. The Plaintiff shews that they were Copyhold Lands, Parcel of the Manor, and entitles himself by Lease under the Co-pyholder, and traverseth, That they were im

impleadable by a Writ of Right, Close; and it was thereupon demurred. 1. Because Copyhold Land, Parcel of a Manor of Ancient Demesne, should be pleadable there, and not at Common Law. 2. Because this Traverse, that they were impleadable, is but the Confequence of Ancient Demesne. Per Cur', the Copyhold Lands are as the Demesnes of the Manor, and are the Lord's Freehold, and therefore not impleadable but in the Lord's Court, and the Traverse is well enough taken. I Bulftr. 108. Cr. El. 826. 5 Rep. 105. Alden's Cafe. Stiles 90. Cro. Jac. 559. Pymmock and Feilder.

Now a Leafe for Years is intended to be taken real in a Recovery, and because a Lease for Years intended to be recovered in Ejectione Firme, it is a good Plea to fay it is Ancient Demesne, yet a Lease for Years is but personal in Quality. 2 Rolls Rep. 181. Banister and

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The Defendant imparles in Ejectione Firme, Whether Anand after pleads that the Land is Ancient De- cient Demesne, &c. & unde intendit quod Curia non mesne is vult cognoscere, &c. The Plaintiff demurs: pleadable af-Per Cur', this Plea is pleadable after Impar- lance. lance, because if Judgment be given here, the Lord will reverse it by Disceit, and the Judgment will be avoidable, and the Diversity is true, A Man may plead that which is in Bar after an Imparlance, but not that which goes to the Writ: and this holds in all Cases but Ancient Demefne. 2. The last Conclusion is Surplu- Conclusion of fage; but if he had begun his Plea Actio non, Ples. it had been ill, notwithstanding the Conclusion, ut supra. But the Desendant wiaved his Demurrer without Costs, and pleaded to Issue,

The Law of Ejenments.

if Frankfee, or not: And yet Hetley faith, p. 117. It was agreed by all, that Ancient Demesne is a good Plea in Ejectment, but not after Imparlance. Marsham and Allen's Case.

Dyer 210. in margine.

New Defen-

dant not to plead Ancient Demeine after the former Imparlance.

Plea of Ancient Demesne allowed the same Term:

And how.

But now if a Man come in and pray to be made Defendant, and to plead specially Ancient Demesne, he shall do it; and it's now used of Course to plead Dilatories after Imparlance. 1 Keb. 261. Holiday's Cafe. But in 1 Keb. 706. by Windbam, the new Defendant (one that prays to be made fo) may plead Ancient Demesne after the former Imparlance, because it's not any Ouster of the Court of Jurisdiction. Cur' è contra. He ought to plead Not guilty personally, Roch and Plumpton's Cafe. And in I Keb. 753. Snow and Cooley. The Court will allow Plea of Ancient Demesne the same Term, contrary to the ordinary Rules in Ejectment. And in Sutton and Courtney's Case it was prayed by Council, That the Defendant might have Liberty to plead Ancient Demesne to a Declaration delivered before the Essoin of this Term, as of last Term, which the Court granted, and ordered him to attend the Secondary to fettle the faid Plea, which is usually done by making the Plaintiff deliver a new Declaration, as of this Term, and so the Plea cometh quasi before Imparlance. 2 Keb. 725.

In David and Lyster's Case, Rolls said, Ancient Demesne is a good Plea after Imparlance; for it goes in Bar of the Action it felf, and not in Abatement of the Writ.

Stiles 90.

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Ancient Demesse was pleaded in Eject-Ancient Dement, That it is Parcel of such a Manor messe.

which is Ancient Demesse.

Replicar', That the Tenements in Narration's are pleadable at Common Law, abjque boc, That those Tenements are Parcel de antiquo Dominico: Demurrer to it, and Judgment pro Def'. Per Cur', the Traverse is ill; you ought to have traversed that the Manor was Ancient Demesne, and that shall be tried per Doomsday. Book; or else you ought to have traversed that those Tenements were held of the

Plea puis darrein Continuance.

Manor. Showre 271. Hopkins and Pace.

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Ejectione Firme was brought for entring in- Release puis to Three feveral Vills: The Declaration makes darrein Contimention of no Vill in certain. The Desen nuance before the Justices dant pleads a Release puis darrein Continuance of Nisi-prius, before the Justices of Nisi prius. Per Cur' a they cannot Man cannot plead a Release at the Nist. prius take it. after Iffue joined, for fo none should have Judgment: When this Plea is pleaded, the Justices of Nisi-prius cannot proceed to take the Inquest, and to this Plea of the Defendant; the Plaintiff cannot there reply, but he ought to reply in Bank. After Issue joined, and a Venire fac' awarded in such a Vill, the Sheriff returns nul tiel Vill; this is not good, for he cannot return that Thing which is contrary to the Issue to avoid the Trial, a fortior' one of the Parties cannot plead such Matter at the Nifi-prius; the Authority of the Justices of the Nife prius is to take the Verdict of the Jury, and no other Plea: And the Justices of

the Nisi-prius have no Power to amend any Fault in the Declaration; and when the Sefsions end, their Authority ceaseth. Vid Cro. Fac. 261. contra. 10 H. 7. 21. 1 Bulftr: 92. Moor and Brown. Yelv. p. 180. Cro. 7ac. 261.

In Ejectione Firme against two, one appears and pleads the General Issue, and Process continues against the other, who now appears and pleads Entry puis darrein Continuance in Abatement of the Writ: Upon which the Plaintiff demurs; and after Issue was found for the Plaintiff, he shall not have Judgment, for the Demurrer is a Confession of the Entry,

Demurrer a Confession of and shall abate his own Writ, for in this the Entry. Action the Term is to be recovered; aliter if

he had imparled. Vide supra, Plea in Abate-

ment. Dyer 226.

Release pleadof the Argument.

Upon a Special Verdict in Ejectment, and a ed at the Day Day given for Argument, before which the Desendant procures a Release of all Ejectments. and at the Day for the Argument, pleaded the Release Puis darrein Continuance, and good; aliter of a Release between the Nist-prius and Day in Bank, because there he had no Day in Court, nor has he any Remedy but by Audita Querela, if the Plaintiff sued Execution. 2 Rolls Abr. 467. Wykes and Bunbury. Cr. Fac. 646. Stamp and Parker.

Ejectment was brought of Lands in K. and two other Villages. The Defendant pleads Not guity; and at the Nisi-prius pleaded, That the Plaintiff Puis le darrein Continuance entred into a Close, parcel' pramissorum, and him expelled; and a Demurrer upon it, because he declared not in which of the Villages the Close lay. Per Cur', this Plea is receivable,

for

Entry puis dar' Cons' pleaded at the Nisi-prins, the Plea is receivable.

for it is Matter in fait, and peremptory to him who pleads it; for as a Release or Matter in Bar may be pleaded, so may this, and is receivable at the Discretion of the Justices, if they perceive any Verity therein: So is Rollis Abr. 620. Moor and Hawkins. Cr. Fac. 261. Telv 180. Moor and Hawkins. 1 Brownl. 145.

In Ejectione Firme the Defendant may plead at the Affizes before the Justices of Nisi-prius. That the Plaintiff had entred into Parcel of the Land mentioned in the Declaration Puis darrein Continuance, the Justices of Nisi-prius may accept the Plea, and dismiss the Jury; and tho' they do not give any Day to the Parties in Banco, yet this is not any Discontinuance, altho' that the Plea be collateral; for the Day of Nifi-prius, and Day in Bank, are one Day: For the Court in Bank gives Day to the Jurors in Bank, Nisi prius Justiciarii ad Assisas venerint, and to the Parties Day is given there absolutely. 2 Rolls Abr. 630. Moor and Hawkins, I Rolls Abr. 485. Sir Hugh Brown's Cale.

In Ejectione Firme, after pleading Not guil- By this Pleas ty, a Release is pleaded Puis darrein Continu- the First Issue ance, whereby the First Issue is discharged, is discharged. which the Court granted, And tho' the Justices cannot try it at Nisi-prius, unless they think it but Golour and insufficient, yet if he think it sufficient, he must sign a Bill of Ex- Bill of Except ceptions, for the Trial is Error; and so Yelv. tion. 181. And in this Case the Release of the Lesfor of the Plaintiff is but Colour: Also the Party cannot demur to such Plea; also the Agreement to try and stand to the little only; is no Cause to over-rule such Plea; and per Lź Gut'

Cur', the Plea certified hither was allowed, notwithstanding such Agreement being gained after. 3 Keb. 67: Mich. 24 Car. 2. Carter and Haggard.

Formerly Accord and Satisfaction a good Plea in Ejectment:

H. P. brought Ejectione Firme against R. C. and A. his Wife, and A. D. for an House in G. in, &c. upon Demise made by A. H. the 7th of April, 8 Fac. for Five Years, and that the Defendant the 10th of April in the same Year ejected him, &c. The Defendant pleads, That after the Trespass and Ejectment, (viz.) primo Maij Anno octavo supradicto apud G. praditt' talis inter R. C. præfat' H. P. tam de Transgressione & Ejectione prædict' quam de omnibus aliis querelis debitis & debatis inter eos ante tunc habitis fact', sive propter al', &c. habebatur concordia, that in Satisfaction thereof the faid R. one of the Defendants should pay to the Plaintiff 61. 10s. at the Feast of St. Michael then next enfuing, and that for the true Payment of this he shall become bound in an Obligation of 13 l. and pleads Performance of this, and the Receipt of the faid Sum at the faid Feast accordingly. And it was resolved. That Accord in this Action is a good Plea. as being in Nature of a Trespass. And tho the Term (which is a Chattel Real) shall be recovered as well as Damages, yet it's a good Plea; and Accord and Satisfaction for one thall discharge all the Trespassors and Ejectors. Vid. this Cafe argued, 2 Brownl. 128. 9 Rep. 77. Hemry Peytoe's Cafe. But

But now the Rule is to stand upon the Title only.

Aid Prier; where Aid shall be granted in this Action, and in what Cases not.

The Defendant justified as in his Franktene. The Defenment the Reversion to the King, and prayed dant shall not in Aid of the King. Per Cur', he shall not have have Aid of the King, and Aid in this Action, which is as a Trespass up- why. on this Plea; for he needs no Aid of the King to maintain this Plea, So in Allen and Hollowell's Case, the Defendant pleads, That the Queen was seized in Fee, and let it to 7. S. for Years by Patent, who let it to the Defendant, and prays in Aid of the Queen; and it was ruled to be no Plea, because he is not immediate Tenant; wherefore a Respondeas Ouster was awarded. And in Bridgman's Rep. 87. it is agreed, That the Defendant shall not have Aid of the King, because he is not his immediate Tenant, and so no Privity between the King and him. And to the fame Purpose is Anderson's Case in Hardress's Reports. The Defendant prayed in Aid of the King's Leffee for 99 Years for his Dutchy Land in Trust for the Queen, as part of her Jointure, and as Bailiff to them; and it was denied by the Court. And upon the General Issue it appears not whether the Right will come in Question; and yet it's said in the Countess of Kent's Case. 3 Fac. B. R. That in Ejectione Firme the Defendant shall have Aid of the King, because by Intendment the Freehold shall come in Debate in this Action, I Rolls Abr. 407, 156. Bennet's Cafe, Cro. El. p. 374. Allen L 3

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The Law of Ejeaments.

Allen and Hollowell. Hardr. 179. Anderson and Arundel. 1 Rolls Abr. 148.

Perendant shall have Aid of a common Person. But Aid lies in Ejectione Firme (of a common Person) when the Title of the Land is to come in Question. And if a Man recover in Ejectione Firme against 7. S. who dies, in a Scire facias against his Heir, the Heir shall have Aid of him in whose Title his Ancestor claims. I Rolls Abr. 161, 162.

A Writ not to proceed (Regina inconfulia) allowed.

In Ejectment the Defendant pleaded Not guilty, and after Issue joined, the Queen sent a Special Writ to the Court, reciting, That how the Defendant was Tenant in Tail with divers Remainders over, the Reversion to the Queen, and that her Reversion might be prejudiced by this Trial. Wherefore it was commanded then not to proceed to the Trial of this Issue, Regina intonsulta. And it was a Question much debated, whether this Writ were allowable or not, because it is a personal Action only. Per Cur', this Writ ought to be allowed (as well as Aid Prier) because it appears to them, that the Queen may be prejudiced in her Title; and by the Writ there is a Recital of a Title in the Queen; and her Trial of Right is to be discussed in Chancery, where the Queen's Records are to prove her Title; therefore per Curiam we shall not proceed without a Procedendo, Vid. I Anders. 280. Blofeild and Harris. Cro. Et. p. 417. Sale and Barrington. Moor 421. me me Cafe. Hardr. 428. In Trespass for breaking his Close, the Defendant pleads, That before this he had

brought Ejectione Firme against the now Plain-

tiff, and recovered, and had Execution, &c.

Judgment & actio. Per Curiam, it is a good Bar,

where the King's Trial of Right to be dismissed.

In fuch Cafe

Recovery and Execution in a former Action pleaded in Bar.

and

and the Conclusion of the Plea is also good. Judgment & actio, without relying upon the Estoppel. i Leon. p. 313. Rempton and Cooper.

Ejectione Firme Was brought against Drake and Five others: Drake pleads Not guilty, the other Five quoad 20 Acras plead Not guilty; and as to the Residue that long Time before, &c. the Plaintiff in his Replication faid, He was possessed till by the said Five Defendants. who pleaded in Bar, he was ejected; and by his Declaration he has supposed himself to be ejected by all the Six Defendants, and so a Departure from the Declaration in the Nuntber of the Ejectors. But Curia contra: For Drake, by his several Issue which he has joined Several Issue. with the Plaintiff upon Not guilty, is severed from the other Five Defendants; and then when they plead in Bar, the Plaintiff ought to reply to them, without meddling with Drake. So in Ejectione Firme of 20 Acres, the Defendant as to 10 Acres pleads Not guilty. upon which they are at Issue; and the Plaintiff replies as to the other 10 Acres, and fo was posses'd until by the Defendant of the said 10 Acres he was ejected: This is good. without speaking of the other 10 Acres, upon which the general Issue is joined. 2 Leon. p. 199. Holland and Drake.

It was moved for the Defendant, that he Inthis Action might have Liberty to plead specially in an not to plead Action of Trespass and Ejectment, and not without Congenerally Not guilty, because there had been sent of the Matter given in Evidence at a former Trial, Plaintiff. which ought not to have been. By Rolls, if the other will not consent, you shall not plead

specially,

The Law of Ejeaments,

specially, but proceed according to the Course

of the Court. Stiles Rep. 412.

Defendant not to plead till Costs affessed in a former Action was paid, and Security for new Costs.

Note, The Defendant by Rule of Court was not to plead till Costs paid, assessed in a former Action on Nonsuit, and that another Plaintiff might be named, or that Security be given to pay the Costs, if the Plaintiff should be nonsuit again. Stiles p. 433.

Bar or Recovery in one Ejectione, bow far a Bar or Recovery in another.

Bar in one Fjellione Firme, how a Bar in another.

Recovery in one Ejectione Firine, a Bar in another.

It was a Question, Whether a Bar in one Ejectione Firme were a Bar in another? And Justice Berkley said, It was adjudged upon this Difference, That a Bar in one Ejectione Firme is a Bar in another for the same Ejectment. but not for another and new Ejectment. And in Godbolt's Rep. Case 128, in Trespass the Defendant pleaded that at another Time before the Trespass, he did recover against the same Plaintiff in Ejectione Firme, and demanded Per Cur', it is a good Plea prima Judgment. facie, and that the Possession is bound by it, for otherwise the Recovery should be vain and ineffectual. And by Anderson, If two claim one and the same Land by several Leases, and the one recovereth in Ejectione Firme against the other; that if asterwards the other bringeth an Ejectione Firme of the same Land, the first Recovery shall be a Bar against him. Per Rhodes, a Recovery in an ad terminum qui preseriet, shall bind the Possession. Godb. 2. 109. Nº 128. 3 Leon. 194.

In Trespass for breaking his Close, the Defendant pleads, before this he had brought

Eje-

Ejectione Firme against the now Plaintiff, and recovered, and had Execution, Judgment & actio. Per Cur', in I Leon, 213. Kempton and Cooper's Case, and 2 Lean. 194. the same is a good Bar, and the Conclusion of the Plea is also good, Judgment si actio, without relying on the Estoppel; and by Two Justices it is no Estoppel, for the Conclusion shall be Judgment si actio, and not si serra respond, and it was well pleaded. For as by Recovery in Affife the Freehold is bound, so by Recovery in Ejectione Firme the Possession is bound. And by Anderson, a Recovery in one Ejectione Firme is a Bar in another, especially if the Party relieth upon the Estoppel; and altho' it be in an Action personal, and in the Nature of a Trespals, yet the Judgment is good, Habeat possessionem termini sui, during which Term the Judgment is in Force; and it's no reason he should be ousted by him against whom he recovered, for so Suits would be infinite; but this grave Advice is now laid aside. 4 Leon. 77. Spring and Lawfon.

Note, In Ejectione Firme against two De- Two Defenfendants, one confesseth the Action, and the dants, one other pleads in Bar Non Culp'; per Cur', tho' confesse h, in Trespass against two, and the one makes pleads in Bar. Default, and the other confesseth the Action, he cannot he may well relinquish his Suit against him leave the one, who makes Default, and proceed against the and proceed other which confesseth or pleads in Bar, be against the other. cause this Suit is only in point of Damages, but not so in Ejectment, he cannot relinquish his Suit against one, and proceed against the other; for if so, any Man may be tricked.

2 Bulitr. 112.

The Law of Ejeaments.

Expiration of the Term in Ejectione Firme,

is no Plea. Latch 106.

Upon a Trial at Bar between Odil and Terril, a Juror was challenged, for that he faid to one of the Parties, Provide you to pay, for if 1 am Sworn, I will give the Verdict against you, And that this is true, the Parties to whom the Words were spoken did offer to depose the fame; and the Question was, If he should be suffered to swear this, he being one of the Parties? And he was allowed by the Court to be fworn to prove the Challenge good; and for this Cause the Triers found him not to be indifferent, and so he was withdrawn. Another Juror was challenged in this Case, for that he had bought Land of one of the Parties in the Suit, (viz.) of the Lessor, and that the Lessor did owe to this Juror 10%, and notwithstanding this Challenge, the Triers found him indifferent, otherwise per Cur' if the Juror had owed Money to one of the Parties. I Bulft. 20, 21. Odil and Terril.

The Juror had bought Land of the Lessor.

CHAP. IX.

Of Challenge. What is Principal or not. Of Of Venue. Where the Parish and Elifors. Vill shall be intended all one, Where it shall not be de Corpore Comitatus. Where the Venire fac' is amendable. Venire fac' to the Coroners, because the Sheriff is Cousin to one of the Defendants. A Venire de Forest. Venire de Novo for Baron and Feme.

DY Coke in Guest and Bridgman's Case, Cousin to the D it's not a principal Challenge, that the Lessor. Sheriff is Coulin to the Lessor in Ejectment. for the Leffor cannot hinder the Action of the Lessee (this is not Law). I Rolls Rep. 228. 2 Rolls Rep. 181. Banifter's Cafe.

Venire fac' awarded to the Coroners upon Lessor Ser-Surmise that the Lessor was Servant to the vant to the Sheriff. 2 If it be a principal Challenge? Sheriff. If it be no principal Challenge, then is not the Writ well awarded, and is not aided per Stat. 32 H. 8. Cro. Fac. p. 21. Harebotle and Placock.

Challenge to the Sheriff, and a Venire fac' The Sheriff prayed to the Coroners, because the Sheriff Cousin to the is Cousin to the Plaintiff, and shews how; Plaintiff. and because the Defendant did not deny it. a Venire fac' was awarded to the Coroners, and Judgment was arrested, because it was not a principal Challenge, and a Venire de Novo awarded to the Sheriff, 1 Brownl. 130. Cradock and Fones.

The Law of Ejeaments.

That a Juror had married the Confingerman of A.

It is not any principal Challenge to a Juror (in Ejectione Firme), That he had married the Coufin-German of A, who was the Wife of R. from whom is descended H. from whom is descended B. who have the Reversion of the Land in Question after the Death of his Mother, who is to have an Estate for Life; this is not any principal Challenge, because the Estate of B. does not appear in the Record, and he had not the immediate Reversion. 2 Rolls Abr. 654. Gabriel Dennis's Cafe.

Elifors.

for of the Plaintiff is High-Sheriff, a principal Challenge.

Elifors.

In the Lord Brook's Case, the Court was informed. That the Lessor of the Plaintiff was High Sheriff of the County, and that the Coroner was Under-Sheriff; and it was prayed that Elisors might return the Jury; but the Court would not grant it at the Prayer of the Defendant, though the Plaintiff offered to agree to it, it being in a Trial of Nisi prius; but had it been in a Trial at Bar, the Court would have granted That the Lef- it. But the regular Course is for the Plaintiff to pray it, or else the Defendant may challenge the Array at the Affizes; for it is a principal Challenge, that the Lessor of the Plaintiff is High-Sheriff, or of Kindred to the Trin. 1657. Hut. 25. Moor 470. Rolls Rep. 220. 15 Car. 2. B. R. Duncomb and Inglesby.

> In Ejectment the Plaintiff suggesteth, that his Lesfor the Sheriff, and Coroners, were Tenants to a Dean and Chapter, whole Interest was concerned, and prayed the Venire fac' to Elifors, and had it, being confessed by the Defendant; and the Court took it as a

prin-

principal Challenge. Duncomb and Inglesby's Cafe.

In Spectione Firme the Array was challen- Challenge of ged, because it was made at the Nomination the Array to of the Plaintiff, and by Confert of the Part the Lessor. ties, two of the Attorneys of the Court did try the Array. The Trial of the Array is good, either by the Coroners, or by two Attorneys. Godbolt 428. Williams and Lloyd. 2 Rolls

Rep. 363, and 131.

In Ejectione Firme, on Non culp' pleaded, it is not any Challenge to the Array, that the Sheriff is Cousin to the Lessor of the Plaintiff; for it does not appear that the Title of him in Reversion shall be in Question, for peradventure the Leafe is not well made, or no Ejectment committed, and he in Reversion is not any Party to the Action. So in the faid Case it shall not be any Challenge, although it appear to the Court by Averment that this Leafe was made only in Trust, and to try the Title of the Plaintiff for the Cause aforesaid. But now in our seigned Eject- Note. ments it is otherwise, because the Title of the Lessor is only in Question. 2 Rolls Abr. p. 653. Sir Edward Kempston and Banister Cradock. Id. ibid.

Ejectment for Lands in Suffex tried at the Bar, the Defendant challenged the Polls for Default of Hundredors, but did not shew it for Cause till the Pannel was perused. Per Hale, Chief Baron, It is against the com- Challenge for mon Course to take a Challenge for want of Default of Hundredors Hundredors, when the Trial is at the Bar, on Trial at upon a Jury returned at the Denomination Bar. of an Officer of the Court where there are

but

but Four and twenty lest by the Parties themselves. But if this Challenge be taken to the Polls, it must be taken presently, and the special Cause assigned, (viz.) want of Freehold there. Hardr. p. 228. Attorney-General and Pickering in Scaccario.

In Ejectione Firme, upon a Lease made in G. of Land in T. in G. prædict, the Venue shall not be from G. but from T. for it shall be intended that T. is a Vill of G. 2 Rolls Abr. 620.

Beachamp and Sampson.

The Leafe is made apud Curdworth of Lands lying in Parochia de Curdworth prædict', the Issue was, de Vicineto de Parochia de Curdworth: The Venire is well awarded, [pradiet] is fuch an Averment, as that of Necessity it must be taken that Curdworth the Town, and Curdworth the Parish, are all one; and if so be the Venire fac' is of the one or of the other. it must be good. But if the Parish be a larger Continent than the Town, aliter, because it cannot be intended that more Towns were in the Parish, unless it were shewed on the other Side; and we are to judge by the Record, which proves the Town and the Parish to be all one. So in 42 & 44 Eliz. in Ejectment, the Leafe whereupon the Trial was had was made apud Abingdon, of Lands lying in Burgo de Abingdon prædict'. The Venire was, de Vicineto de Burgo de Abingdon prædict'. This is a good Venire, for [prædict'] makes this by Inrendment of Law to be all one. 2 Bulft. 209. Vale and Field, 2 Rolls Rep. 21. mefme Cafe. Cro. Fac. 240, mesme Cale.

In an Ejectione Firme, if the Plaintiff de- The Issue of clare of a Lease made apud Ickworth of Land Not guilty in Berry in Suffolk, and Not guilty pleaded, Ejectment the Venire fac' shall be from Berry, and not where the from Ichworth; for the Issue of Not guilty Land lies. refers to the Ejectment, which was where the Land lies. 2 Rolls Abr. 619. Pell and

Spurgeon.

The Award upon the Plea-Roll was ven fac against both Defendants; they both plead amended. Non culp'. The first Process, (viz.) the Habeas corpora was against both, but the Venire fac' against one of them, only one of them being named in the Trial, and Verdict for the Plaintiff against both Defendants. Per Cur', the Venire fac' was amended after Error brought, because vitium Clerici. 3 Bulft. 3111

Cranfeild and Turner.

Ejectione Firme of Lands in D. and the The Vill and Visne was from the Parish of D. and Verthe Parish in-dict pro Quer': It was objected as Error, for one. the Venue ought to be from D. and not from the Parish of D. for it may be the Parish extended into feveral Vills. But per Cur', it is well awarded, for prima facie they shall be intended all one, if it does not appear to the contrary by Pleading; and it shall not be intended to extend into several Vills. Jones Rep. 205. Gilbert and Parker. Moor 797, 798, 837.

If Ejectment be brought of Land in Dale, and there is a Parish called Dale, and a Vill called Dale, and a Vill called Sale, lying within this Parish; and the Land lies in the Parish of Dale, but not in the Vill of Dale, but in the Vill of Sale, the Parish of Dale: This

is against the Plaintiff, for the Law delights in Gertainty; for whensoever a Place is alledged generally in Pleading, without any Addition to declare the contrary, this shall be taken for a Vill, 1 Inst. 129. 11 Rep. 25. b. accord. The principal Case was ruled by Baron Denham, in Nicholas and Plomer's Case, at the Assizes at New Sarum, Circa 2 Car.

The Venire fac' was, de Vicineto Parochia de Bredon, which was ill; for the Lease and Ejectment are alledged to be at Bredon, which shall be intended to be a Vill, and the Lands are intended to be at Workington (which also shall be taken to be a Vill) in the Parish of Bredon: So that it appears to the Court, that there is a Town called Bredon, a Parish called Bredon, and Workington a Vill in the Parish of Bredon, and the Tythes are alledged to be in Workington and Willesdon (which also shall be intended a Vill) in Parochia de Bredon; so that the Venue ought not to have been out of the Parish of Bredon, Workington, and Wille don. And though Workington and Willesdon are named Hamlets in the Pernomen, yet the Court ought to adjudge upon that which is alledged by the Plaintiff in his Count. II Rep. 25. 6. Harper's Cafe.

Ejectione Firme versus B. for ejecting him of certain Lands in Creeting St. Mary's, Creeting St. Olaves, and in Creeting Omnium Sanctorum; and the Venire fac' was, de Vicineto de Creeting St. Mary, Creeting St. Olaves, and Creeting Omnium, omitting Sanctorum. The Court blamed the Clerk for his Negligence.

Winch 34. Good and Bawtry.

In the Venire fac' one of the Pannel was named Thomas Barker of D. and in the Distring as 'furat' he was lest out, and Thomas Carter de D. put in his Place; and at the Nisi prius Thomas Carter was sworn, and with others tried the Issue, Per Cur', there is Difference between Difference in a Mistake in the Name of Baptism, and in Law between the Sirname; for a Man can have but one a Sirname and Name of Baptism, but may have Two Sir- Baptism; names, as George for Gregory. And being Iworn at the Nisi prius, it's a void Verdict. Cro. El. p. 57. Displyn and Spratt.

Ejectione Firme of a Lease apud Denham in Lands of the Parish de Denham prædict'; the Venire was de Vicineto de Denham, it's good enough. The Parish and Village are intended to extend, and to be all one. Cro. Eliz. 528.

Bedel and Stanborough.

The Venire fac' was ad faciend' 'furat' in placito Transgressionis, whereas it should have been in placito Transgressionis & Ejectionis Firme, and it was not amended; for though Ejestione Firme is but a Plea of Trespass in its Nature, yet the Actions are feveral, and therefore the Venire fac' ought to be accordingly. Eliz. 622. Clerk's Cafe.

Ejectione Firme of a Leafe at Mockas in Lower Mockas. The Defendant pleads Not guilty, and found against him, and it was moved to be a Mistrial; for the Venire fac' was awarded from Mockas, where it ought to have been from Lower Mockas, the Issue being Not guilty. But if the Leafe had been traversed, it had been otherwise. Williams and Whitin,

The Law of Ejemments.

In Ejectione Firme the Plaintiff declares of a Lease of Land in B. Pernomen of, Oc. in B. C. Oc. The Venue from B. is good. 2 Rolls

Rep. 479. Taylor and Lenn.

Venire fac' amended.

Another Perfon fworn on

the Jury, who

was not re-

turned; it's

cause Estop.

pel.

The Appearance and Issue were in Hill. 1 Fac. and the Bail was Crastino Pur', and thereupon was the Declaration, and Iffue, and Venire fac' awarded, bearing Date the 23d of January, I Jacobi; and upon this a Distringas, the 12th of February, moved in Arrest, that the Venire fac' was awarded before the Appearance and Declaration to try the Iffue in the same Action, and cannot be good. Per Cur', it was amendable; for the Roll is the Warrant of the Venire fac', which being variant from it, the Teste thereof shall be amended to be subsequent to the Issue And whereas the Teste was the 23d of Fannary, which was Sunday, it shall be amended, it being but the Fault of the Clerk, and misawarding of Process, which is aided per Stat. 22 H. 8. & 18 Eliz. Cro. Fac. 64. Dolphin and Clark.

William Brown of Bradfeild was returned upon the Venire fac' and Hab' Corpera, and William Brown of Metfeld, who was another Person, and not returned, was sworn; yet no Error, be- this cannot be affigned for Error, for it is against the Record, which is, that William Brown of B. was returned and fworn; and he is estop'd to say the contrary, for then every Record may be brought in Question upon fuch Surmife. Cro. Fac. 244. Bows and

Cannington,

A Vill and Parish are intended all one. unless the contrary be shewed. Vide Cro.

Fac. 150. Batch and Gilbert.

The Court was moved to change the Venue in Ejectment laid in London, because the Lands in Question did concern the Poor in London: and therefore it was supposed they could not have an indifferent Trial. Per Rolls, the Action is local, and cannot be removed, except you draw it from thence by your Plea.

Stiles Rep. 195. Hunstop and Fobnson.

In Ejectione Firme upon a Leafe made at D. Where it shall in Comitat' E. of Land called S. If Not guilty not come de be pleaded, and a Venire fac' awarded de Cor- Corpore Camipore Comitatus E. there not being any Vill named wherein the Land lies, it is erroneous; because this lies in some Vill, out which the Visne ought to have come to have tried it, and in such Case it ought not to come de Cerpore Comitatus, for this is larger. Hob. p. 89. Rich and Sheere.

Venire fac' awarded to the Coroners, ita guod B. one of the Coroners se non intromittat, because he was Servant of the High-Sheriff, who was Lessor of the Plaintiff: It was faid, the fame was no Caufe of Challenge; but the Court conceived it was, being con-

fessed. Moor 623. Higgins and Spicer.

In Ejectione Firme against Four, who plead Where the Not guilty, if the Plaintiff suggest that the Sheriff is of Sheriff is of Affinity to one of the Defendants, the Defenshewing how, and upon this prays a Venire dant. fac' to the Coroners, and the Defendant does not deny it, and upon this the Venire fac' is awarded to the Coroners, it is well awarded. For although none of the Defendants may M 2 chal-

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challenge the Array, because the Sheriff is of Affinity to one of the Defendants, yet the Plaintiff ought at the Trial either to challenge the Array, and so delay himself, or he ought not to try this during the Time that he is Sheriff, which would be a great Delay. 2 Rolls Abr. 668. Fox and Shepheard in Exchequer-Chamber.

Vide Raymund 572. Consent may make a

Trial had in a foreign Country good.

Vi [ne de Forresta.

In Ejectione Firme of three Acres of Land in Forresta de K. in Com', &c. If the Defendant plead Non culp', the Venue may be de Vicineto Forresta; for this is Lieu conus, and by Intendment, foralmuch as the Defendant had not pleaded this in Abatement, this is out of any Parish or Vill. 2 Rolls Abr. 621. Phillips and Evans.

The Wife found Not guilty, and a special Verdict as to the Baron, which was infufficide novo awarded for both. and why.

In Ejectione Firme against Baron and Feme, on Not guilty pleaded, and a Venire fac' granted, the Jury find the Wife Not guilty. and find a special Verdict as to the Husband. which special Verdict is afterwards adjudged insufficient, a Venire fac' de novo shall be ent, a Ven' fac' awarded for both, as well the Wife as the Husband. And upon this new Writ the Wife may be found guilty, because the Record and Iffue is entire; and for this their Verdict is insufficient in all, and void. Vide infra, Tit. Special Verdict.

CHAP. X.

Of joining Issue and Trial, and Bill of Excep. tion. In what Cases there shall be Amendment.

THE Record of the Nisi prius was amended by the Plea-Roll. I Brownl. 133.

Gaff and Randal.

Issue was joined, the Desendant pleads Not guilty, and it was enter'd, and the aforesaid Lessor likewise, where it should have been & prædict' Querens similiter, and it was amended. So & præditi Thomas similiter, where it should be præditt' Johannes similiter, and it was amended. 2 Brownl. 102. Weeby's Cafe,

2 Roll. Abr. 199.

The Issue was Not guilty, and a Venire awarded, returnable 3 Trin. and the Effoin adjourned by the Plaintiff till Michaelmas Term; and at the next Affizes the Plaintiff, notwithstanding the Essoin, and the adjourning it, procured a Nisi prius, by which it was found for the Plaintiff. And per Curiam, no Nisi prius ought to issue out in this Case, because the Plaintiff himself by the adjourning the Essoin, cast by the Desendant until Michaelmas Term, had barred himself of all Proceedings in the mean Time. And the Words in the Stat. W. 2. c. 27. are Postquam Stat. W. aliquis posuerit se in aliquam inquisitionem ad prox? 6. 27. diem allocet' ei Esson'; import, That the Es soin shall not be taken at the Return of the Process against the Jury, although the Jury be

M 3

ready at the Bar. But then it was surmised, that the Desendant was not essoned, for the Name of the Desendant is E. H. and it appeared at the Trial, that E. K. was essoined, and the Court desied to amended it, and there was no Essoin, and so no Adjournment; and the Plaintiss was at large, and Judgment pro Quer'. Note, No Statute gives Amendment but in the Affirmance of Judgments and Verdicts, and not in Deseasance of Judgments and Verdicts. I Leon. p. 134. Woodel and Harel.

In Dyer 89, the Plea was, Quod non ejecit Querentem de, &c. modo & forma, it was moved there, that it is not any Plea; and yet

Dyer, Vide 121. b.

The Defendant in any Case of Missermeanour may say generally Non Culp', or traverse the Point of the Writ, as ne forga pas, non ejecit, non rapuit, non manutenuit.

In what Cafe no Verdict shall be enter'd. In Ejectione Firme the Parties were at Issue, and by the Order of the Court the Trial was stay'd, yet the Plaintiss privily obtained a Niss privil; and the Chief Justice being informed thereof, awarded a Supersedeas unto the Justices of Assize, before whom, &c. and yet the Inquest at the Instance of the Plaintiss was taken, and sound for the Plaintiss; and all this Matter was shewed to the King's-Bench. And per Cur', No Verdict shall be enter'd on the Record, nor any Judgment on it. 2 Leonard 167. Feild, Leich and Cage.

Ejectione Firme against Drake and Five others. Drake pleads Not guilty, and others pleads; the Plaintiff replies, and so a De-

mur.

mur. Per Cur', Seeing that one Iffue in this Action was to be tried between the Plaintiff and Drake, and although the Plaintiff offered to release his Damages on the Issue joined, One Defenand to have Judgment against the Five De-dant pleads fendants who had demurred; yet the Court Not guilty, was clear of Opinion, That no Judgment the other deshould be given upon the said Demurrer, till Judment up-the said Issue was tried. For this Action is in on the De-Ejectione Firme, in which Case the Possession murrer till of the Land is to be recovered; and it may the Isfue be be, for any Thing that appeareth, that Drake, tried. who has pleaded the general Issue, has Title to the Land. But if this Action had been an Action of Trespass, there in such Case, ut supra, upon Release of Damages, and on the Issue joined, the Plaintiff shall have Judgment presently. 2 Leon. p. 199. Holland and Drake.

In B. R. after Issue joined in Ejectione Firme, Writ to proand the Jury ready to try it, there comes a hibit the Writ to the Justices that they should not pro- Trial Rege ceed, Regina inconsulta, in the Nature of Aid inconsulta. prier, and it was allowed. Moor 421, 583. Nevil and Barrington.

A Suit in the spiritual Court pro jastitatione Maritagii, flays not Trial. 1 Keb. 519.

Ejectment in Brecknockshire; it was tried in Monmouthshire; since the Stat. 27 H. 8. Stat. 27 H. 8. it is a Miffrial, for Monmouthshire was made Marches. an English County but in Time of Memory by that Statute, and so it ought to have been tried in Herefordshire. Hard, 66. Morgan's Cafe.

Error of a Judgment in B. R. in Ireland in Ejectment, after Verdict, for Lands in the County of Clare: It was excepted, That the Verdict was given by a Jury returned by the Sheriff of the Queen's County, Hob. p. 5. Consent to al- Sed non allocat'; for the Consent of the Parties to this Trial was enter'd upon the Roll, entered upon which was not in Hobart, but only in a proper Rule of Court; and therefore the Judgment there was reverled, as I Rolls Rep. 28. Crow and Edwards. With this accords Cro. Eliz. 664. Sir Thomas fones 199. Devoren and Walcott.

ter the Trial the Roll.

New Trial denied, and why.

A new Trial was denied in Ejectment, though the Verdict was given contrary to the Direction of the Court in Matter of Law, because it was a Trial, and because it is not final. Sir Thomas Jones 224. Earl of Thanet's Cafe.

Ejectment was brought for Lands in the

County of Clare in Ireland. Issue was joined on Not guilty, and then there is an Entry on the Roll, Et super boc pro indifferenti tria-Trial in a Fo- tione exitus prædict' inter partes prædict' eadem reign County, partes ex eorum unanimi Consensu, & Assensu, & Consensu eorum Conciliat' & Attornat', &c.

petunt Breve Dom' Regis Vic' Com' Cork dirigend' de Venire fac' duodecim de corpore Comitatus sui ad triandum exitum predict'. Ideo præcept' est, &c. Then there is a Nisi prius granted to the County of Cork, and the Cause was there tried, and a Bill of Exception put in; and on Debate in B. R. Judgment was given for the Defendant. The Plaintiff brings a Writ of Error, whether Confent can

make this Trial in a Foreign County good:

And

Consent to a

And per Cur', the Trial is well had, Raym. 372. Viscount Clare and Lynch. Hob. 5. I Rolls

Rep. 166, 363. Palmer 100.

At the Affizes in Northumberland, 15 Car. 2. Nonfuit at a Plaintiff in Ejectment was called and non- Nife prins fuited, and this enter'd upon the Record discharged. before the Venire or Distringas, &c. was put in, and this appeared by the Postea produced; and so the Justices of Nisi prius had not Power of Nonsuit, for their Power is by the Hab' Corpus; and therefore the Court discharged the Nonsuit, and gave Leave to the Party to proceed again. Sid. 64. Tomfon's Cafe.

CHAP. XI.

Of joining Issue and Tryal. Where Issue in Ejed. ment shall be tried in other County than where the Lands lie. Trial by Mittimus in the Coun. ty Palatine: Who shall be a good Witness in this Action or not; and what shall be a good Evidence in this Action. Trustee. Parishioners. Copybolder in Reversion after Estate Tail. the Wunesses selling Part of the Land before Trial. Matters of Record. Good Evidence or not. Matters of Fait. Copies, Copy out of a Leiger-Book. Copy of Court-Roll. Ancient Deed. Bills, Answers, and Depositions in Chancery. Inspeximus. Lease made upon an Outlawry. Deed of Bargain and Sale. A former Mort. gage. What is to be proved in Evidence for a Rectory. Probate of a Will. Evidence of a Fraud given in Evidence. dead Person. cital. Counterpart. Patron. Elegit given Of Witnesses examined in Evidence. Bail. in the Country by reason of Sickness. Subpæna ad Testificandum. Inhabitants of a Corporation. Examination of Witnesses in perpetuam rei Memoriam. A former Verdict. Evidence it appears the Title is in a Stranger, the Direction of the Court in that Case. rograph of a Fine, and constant Enjoyment. Invollment of a Deed. Doomsday-Book. Variance. What Matter may or must be given in Evidence, and what may or must be pleaded. What Evidence the Jury shall have with them. Variance

viance of the Evidence from the Declaration: or what Evidence (hall be fued to maintain the Issue. Of Demarrer to Evidence. Exemplification of a Verdict. Where Iffue in Eject. ment (hall be tried.

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TT ought to be in the County where the Land lies. If Ejectione Firme be brought, and laid in Com' D. for Lands lying in another County, although this be by Assent of the Parties, and the Defendant pleads Not guilty, and Verdict and Judgment given for the Plaintiff, yet this is Error; for this is against the Law, which cannot be altered by Affent of the Parties: But upon View of the Record, if it doth not appear to the Court that the Land lies in another County, they will not reverle the Judgment for that Cause. And it was ruled to be Error in the Exchequer-Chamber in the Bishop of Landaff's Case. But in Sir Thomas Jones's Rep. Devo- A Trial by ren and Walcot's Case, it is held, That a Consent in Trial by Confent upon the Roll in other other County County than where the Land lies, is good the Land lies, in Ejectment. 1 Rolls Abr. 787. 2 Keb. 260. is good in Sir Thomas Fones 199. Devoren and Wal. Ejectment. cot.

In an Ejectione Firme in London upon a Trial in Lon-Lease made of Lands in Middlesex, if the don of Lands Defendant plead Not guilty, this may be tried in London, because the Counties may not join, although the Jury ought to enquire of the Ejectment which was in Middlesex. 2 Rolls Abr. 602. Herbert and Middleton.

in Middle ex.

Moved in Arrest of Judgment, that the Leafe was ther County, tiff was not in Poffession.

But in Flower and Standing's Case in Ejest. ment, it was moved in Arrest of Judgment, That the Lease is made at B. of Lands in made at B. of another County; which was moved to be ill, Lands in ano- it appearing that the Plaintiff was not in Possession: Sed non allocatur, for this is Matter and the Plain- of Evidence, and it shall be intended it was after Verdict, and so is the common Course. Mich. 20 Car. 2. B. R.

In the King's Cafe, Trial shall be in the Exchequer, though the Land lie in Wales.

In Ejectment one may not have Privilege of Trial of Lands in Wales in the English County next adjoining, for they are to be tried in the County where the Land lies; otherwise it is, if the King be Party, it shall be tried in the Exchequer. This Action was brought by one of the Ushers of the Exchequer by Privilege. Savile 10, 12.

Trial by Mittimus in the County Palagine.

Ejectment is brought against one in Custodia in B. R. of Lands in the County Palatine, and the Action was laid in B. R. and the Record was fent down by Mittimus from B. R. and special Indorsement of the Postea; and therefore one prayed Judgment against his own Ejector in an Action of Lands in the County Palatine of Chefter, which the Court granted, because when the Defendant hath pleaded to Issue, they may try it by Mittimus in the County Palatine. Redvish and Smith's Case. M. 15 Car. 2. B. R. Holloway and Chamberlain.

Action on the Case on seigned Issue out of Per Twisden Justice, the Lands being in the Isle of Wight, and the Jury of Surrey, this Trial is not allowable to try Conveyata, or not, this being a Windlace to

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ry Ejectments in another County. But in Ventr. 66. a Title of Land was tried out of the proper County upon a feigned Wager, whether well conveyed or not, (this is the usual Course of Issues directed out of Chancery). 2 Keb. 634. Meres's Case, 1 Ventris 66.

Who shall be good Witnesses in this Adion, or not.

It is agreed, That a Trustee cannot be a Trustee. Witness concerning the Title of the same Land, the Interest in the Law being lodged in him. But by Hales, a Trustee may be a

Witness against his Trust. 2 Sid, 109.

In Ejectment the Plaintiff challenged B. Witness to a Devise, because he was Trustee in a Will, and had an Annuity; but he having released both before the Suit, the Court held him to be a good Witness, or if he hath received it, and though it be after the Action brought. Sid. 315.

Interest in Equity disables a Man to be a Interest in Witness; but one who bath an equitable Col-Equity.

lateral Title may be a Witness.

Parishioners may be a Witness to a Devise Parishioners: by which the Parish claims Lands to the Reief of the Poor.

Exception was taken against a Witness Witness had produced to prove the Lease of Ejectment, the Inheribecause he had the Inheritance in the Lands tance. let: But it was urged by the other Side, That the Desendant did claim under the same Person that the Plaintiff did, and so the Witness

Was

The Law of Ejeaments.

was admitted to be sworn. Stiles Rep. 482.

Coparceners.

One Coparcener cannot be Evidence for another in Ejectment, because she claims by the same Title, though she is not Party to the Suit, but the Daughter of her Sister may be sworn; for although she be Heir, yet her Mother may give the Lands to whom she will, being Fee simple. Pasch. 13 Car. 2. B. R. Truel and Castel.

Copyholder in Reversion after an Estate Tail.

In Ejectment of Tythes, the Plaintiff excepted against a Copyholder in Reversion after an Estate Tail, for a Witness to prove the Boundary of a Parish, and he was set aside for the Possibility which makes him partial. Mich. 20 Car. 2. B. R. Hitchcok's Case.

Trefpafs.

In Ejectment of the Manor of S. on Issue out of Chancery to try the Number of Acres, the Desendant excepted to a Witness that had been a Trespassor, as Servant to my Lord Lee in the Lands in Question, an Action being depending: The Court set him aside, and thereupon the Plaintiss was nonsuited. Mich. 20 Car. 2. B. R. Tuck and Sibley.

Estate at Will.

Exception was taken against a Witness to prove the Execution of a Deed by Livery and Seisin, because he had an Estate at Will made to him of Part of the Land; but it was disallowed. Vide Mod. Rep. 21, 73, 74, 107. Hob 92.

Executor of the Grant of a Rent. In Ejectment at Trial at Bar, the Title of the Lessor of the Plaintiff was upon the Grant of a Rent, with Power to enter for Non-payment, the Executor of the Grantor

was produced as a Witness for the Defendant. It was objected against him, That in the Grant of the Rent, the Grantor covenanted for himself and his Heirs to pay it, and so the Executor being obliged, he was no competent Witness. 1 Vent. 247. Cook and Fountain.

On a Trial at Bar, per Car', if one of the Witnesses had Part of the Lands in Question, and he fells or disposeth of it after his coming The Witner to London, or at any Time after he had No- the Land betice of Trial; he shall not be received to give fore Trial. Evidence, though he fell bona fide, and upon a valuable Confideration: And although he himself be not Occupier of the Land, nor had been after the Writ purchased, but another by his Commandment, the Court will not suffer him to be a Witness, because if Verdict pass against him, he who acted by his Commandment may charge him in Action on the Case; but upon Examination it appearing, Witness that the Witness claimed an Estate for Life by claimed E-Title Paramount both their Titles, (viz. Plain- Paramount tiff and Defendant) he was fworn. Syderfin, both their p. 51. Wicks and Smallbrok's Cafe.

Exception was taken against a Witness to One who had prove Execution of a Deed of Feoffment by Estate at Will Livery and Seifin: Two Witnesses were sub- to prove a scribed to prove the Livery and Seisin; after Livery. wards one of those Witnesses had an Estate at Will made unto him of Part of this Land; and because being produced as a Witness to prove the Execution of the Deed, was excepted against, because he was a Party now interested in the Land, and so his Oath was to make his own Estate good. But per Cur',

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The Law of Ejectments.

he may well be fworn a Witness to prove the Livery and Seisin, this being in Affirmance of the Feoffment. 1 Bulft. 202.

Father a Witness for the Son.

The Father testified a Deed in Pursuance and Affirmance of a Lease made to his Son by himself, which the Court allowed, his Interest being pass'd away. 1 Keb. 280. Jay and Ryder.

In Ejectment on Extent on Mortgage on Trial at Bar, the Defendant excepted to the Plaintiff's Witness, because his Father paid a Debt as Security with the Defendant's elder Brother for the Defendant's Father; but there being no Counterbond, and therefore doubtful in Equity, whether he as Heir could recover any Thing against the Defendant as Heir, the Court swore him. But if he were to let himself into a certain Interest, though but in Equity, the Court will set him aside. 2 Roll. 245. Vincent and Turrinsharp.

In Ejectment, one Baker, who had been Sollicitor for P. the Defendant was produced as a Witness concerning the Razure of a Clause in a Will supposed to be done by P. The Question was, If he ought to be examined about this, because having been Solicitor, he was obliged to keep his Secrets? But it appearing that B. had made this Discovery to him, about which he was now to give his Evidence, before such Time as he had retained him, Per Cur', He was sworn; aliter, if he had been retained his Sollicitor before. The same of an Attorney or Councellor. I Vent. 179.

Cutts and Pickering.

In what Cafe Sollicitor, &c. not to give Evidence against his Client.

What

What shall be good Evidence in this Action, and what not.

There are feveral Cases in our Books concerning Evidence upon Leafes made to try the Title, which I shall not at present meddle with, they being of no great Use since the Alteration of Practice in this Action; but I shall mention those which are of daily Use, and principally aim at such Evidence which is allowed or difallowed, as to the proving of Title to Land, without the Knowledge of which there are infinite Failures and Nonfuits in this Action; and I shall first begin with Matters of Record, and then Matters of Fait, Bills, Answers, Depositions, and other Sorts of Evidences, as to Antiquities, Pedigrees, and what Evidence a Man must have to make Title in several Cases. And Lastly, treat of Demurrers upon Evidence and Exemplifications of Verdicts.

As to Matters of Record.

If a Deed be pleaded, the Party must shew Recordshewit in Court; so if a Record be pleaded, it ed in Court must be sub pede sigilli; but Evidence is not absolutely necessary to shew either, if it can otherwise be proved to a Jury, as in 1 Vent.

257. In Evidence for Lands in Ejectment in Ancient Demesse, the Court admitted of Evidence to prove a Record to cut off the Intail (which was lost), and it may be proved to a Jury by Testimony; as the Decree in Henry the Eighth's Time, for Tythes in London, is No lost;

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would prefume a Surrender.

loft; yet it hath been often allowed there was one. And further in this Case it appeared, That Part of the Land was leafed for Life. and the Recovery with a fingle Voucher was fuffered by him in Reversion, and so no Tenant to the Pracipe; yet in regard the Possesfion had followed it a long Time, the Court

Long Poff-ffion.

cord.

Copy of a Re- The Copy of a Record may be shewed and given in Evidence to a Jury, for Records are of fo high a Nature, and have fuch great Credit in the Law, that they cannot be proved by any other Means than by themselves, and no Rasure or Interlineation shall be intended in them; and therefore a Copy of a Record being testified to be true, is permitted to be given in Evidence; but the fure Way is either to exemplifie it under the Great Seal, or at least under the Seal of the Court. 10 Rep.

Leyfeild's Cafe.

In Ejectment for Lands in Brecknockshire; Upon Not Guilty and Trial there, the Defendant gave in Evidence, a Recovery in a Writ of Quod ei Deforceat, which is their Writ of Right at the great Seffions there; and Issue being tendered therein, the Defendant produced an Exemplification of the Record under the Seal of the great Sellions, but not the Record it felf. The Plaintiff demurs to the Evidence, and the Question was, Whether the Exemplification maintained the Issue or not? It was agreed, That a Sworn Copy of a Record in Wales might be given in Evidence, but not an Exemplification, because the Court here ought not to take Notice of fuch an inferior Seal; but if it were exempli-

fied

Exemplification.

fied under the Great Seal, it would be Evidence and Proof, tho' the Record it self were lost. And yet Whitehead's Case was, That an Exemplification under the Seal of the Mayor of Bristol, of a Recovery suffered there under the Town Seal, should be given in Evidence, tho' the Record it self could not be found.

Note, It must be given in Evidence in the like Manner as it is to be pleaded, and that is under the Great Seal. Hardress 118, 119, 120. Henry Olive versus George Gowin. And by Hale, Exemplification of a Recovery in the Marquels of Winchester's Court, in Ancient Demesne was allowed because it was ancient. One had gotten a Presentation to the Parsonage of G. in Lincolnshire, and brought a Quare Impedit, and the Defendant pleaded an Appropriation, and there was no Licence of Appropriation produced, but because it was ancient, the Court will intend it; and in an ancient Recovery, they would not put one to prove Seisin of a Tenant in a Pracipe. Mod. Rep.

The Scyrograph of a Fine may be given Scyrograph in Evidence, (but not delivered to the Jury, of a Fine. 2 Sid. 145, 146.) in a general Issue in Assize.

Plowd. Com. 411.

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Note, If a Fine be given in Evidence with Fine and Five Years Nonclaim, the Fine must be shewed with Proclamations under Seal, and the Scyrograph will not ferve.

A Fine or Recovery may be found by the Fine, Reco-Jury, without shewing it under Seal; but they very. cannot find against what is admitted by the

Record. Sid. 271.

N 2 The

The Law of Ejectments.

Copy of a Recovery.

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The Copy of a Recovery was suffered to be given in Evidence, the Recovery it self being burnt. Mod. Rep. 117. Green and Proud.

No Tenant to the Pracipe proved.

The Court allowed an old Recovery, tho' no Tenant to the Pracipe could be proved, but it shall be intended. Cro. fac. 455. Mod. Rep. 117.

Nothing may be delivered in Evidence to a Jury, but that which is of Record or under

Seal, but by Consent. 2 Sid. 145.

As to Letters Patents, Vide infra Deeds. Dyer 167. The Jury find the Constat of Letters Patents.

Infoczimus.

One may not shew in Evidence to a Jury an Inspeximus of a Deed inrolled in Chancery, if it be not a Deed of Bargain and Sale inrolled there; for if it be a Deed of Feossment, the Party must shew the Deed it self, for the Inspeximus is no Matter of Record. Stiles Rep. 445. But by Rolls, tho' the Inspeximus be the Inspeximus of the Insolment, and not of the Deed it self, yet if it be an Ancient Deed, it may be given in Evidence.

Conviction of a Reculant, the Record being burnt, proved in Evidence.

The Earl of—— being a Popish Recufant convict, presented the Lessor of the Plaintist to a Rectory, who was instituted and inducted, but the Record of the Conviction was burnt (as was supposed) in the Fire at the Inner-Temple. The Defendant offered to prove it by the Estreats thereof in the Exchequer, and by the Inquisition found and returned here of Recusants Lands. Per Hale & tot' Cur', in such a Case as this a Record may be proved by Evidence, because the Conversion here is not the direct Matter in Issue; as was

Sir

Sir Paul Pinder's Case in an Action of Trover and Conversion for Goods, the Proof depended upon a Fieri facias and a Venditioni exponat; and yet in that Case, because the Fieri facias could not be found upon Record, Fieri fac' proit was admitted to be proved in Evidence. ved in Evidence. dence. Hardr. 323. Knight and Dawler.

But when he that fues an Elegit, brings an Elegit must be Ejectment to try the Title, he must in Evi- shewed.

dence shew the Elegit filed.

A Transcript of a Record, or Involment of Transcript of a Record or Deed, may be given in Evidence, for they Involment of are Things to be credited, being made by Of- a Deed. ficers of Trust, but Incolment of a Deed which

needs no Inrolment, is no Evidence.

In Ejectment of Lands in the Parish of Long Hope; the Defendant pleads that they are Part, and held of the Manor of Long Hope, which is Ancient Demesne; and on Issue thereupon Doomsday-Book was brought in, which it appeared, That the Manor of Hope is the Land of W. de B. who held of the King; which per Curiam doth not maintain the Issue, unless the Desendant had pleaded further, that the Lands are as well known by the Name of Hope, as Long Hope; this Book is the Trial, and the Court cannot take Notice Respondeas Ouster. 1 Keb. 520. of the fame. Holdy and Hodges.

by Doomsday.

Matters of Fait.

As for Deeds shewed forth, and given in Evidence, the Learning thereof is excellently delivered in Dr. Leyfeild's Case, 10 Rep.

It is a Maxim in Law, That he which is Party or Privy in Estate or Interest, and he that justifies under him, shall shew the Original Deed to the Court, for this Reason; because to every Deed Two Things are requifite: 1. That it be sufficient in Law, and this is called the Legal Part, and the Judgment of this belongs to the Judges. 2. The other concerns Matters of Fact, (viz.) if it were fealed and delivered, and this is tried per Pais; or whether it be rased or interlined, or upon Limitation, Condition, Revocation, and the like. Therefore it hath been always thought dangerous to permit any upon the General Issue to give in Evidence, That there is such a Deed which they have heard or read, or to prove it by a Copy. But in Cases of Extremity, as where Deeds are burnt by Fire, upon the General Issue the Judges will suffer to prove a Deed to a Jury by Testimony.

Deed proved by Copy or Testimony.

> And what hath been faid as to the Legal Part of a Deed, holds as to Letters Pa-

tents.

Deed cancelled.

leafe.

A Deed cancelled by Practice, was allowed to be read in Evidence in Action under that Deed, the Practice being proved. Hetley 128.

Leafe and Re-

Lease and Release were given in Evidence to intitle the Plaintiff, and they were both named hac Indentura, and were not indented, yet good by Hale, Norf. Assizes, 1668. Bryam's Case. In Negus and Reynell's Case, in Evidence to a Jury, it was held, 1. That a Proof that there was a Revocation, is sufficient for the Heir, without producing the Deed it self. 2. A Lease recited in the Release.

leafe, was admitted to be proved by Witneffes to the Release, without shewing the Lease it felf, which was imbezelled by the Leffor of the Plaintiff, P. 13 Car. 2. B. R.

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And the Copies of Deeds have been admitted in Evidence, the Original agreed to be burnt. So in Ejectment at the Bar, a Copy of a Deed burnt, made by the Witness, to carry about to Council, was allowed for Evidence; fo was Douse's Case at Oxon, and Thyn's Cafe. The Testimony of a Witnels of the Contents of a Deed burnt, but fuch Witness was refused at Lent Assizes by Windham, tho' the Deed were in the Adverfary's own Custody. Mod. Rep. p. 4. Mic. 21 Car. 2. B. R.

It is faid, That a Copy of a Deed is good Evidence, where the Defendant hath the Deed, and will not produce it. Mod. Rep. ---2 Keb. 483. 15 Car. 2. Stroud and Hill.

One claimed under a Leafe for Years of a Prebend, &c. and after he claims under a Leafe from a Nominal Prebendary thereof, founded in the Cathedral Church of Lincoln; and he offered (at a Trial at Bar in Ejectment) to read a Copy of a Leafe out of the Copy out of Leiger-Book of the Dean and Chapter of Lin. a Leigercoln, but it was disallowed per Curiam; for Book no Evithe Book it felf is but a Copy, and a Copy dence. of a Copy is no Evidence. P. 27 Car. 2. B. R. Cotterel's Case., Leiger-Books and Paper-Books cannot be exemplified, but when offered in Evidence, must be produced themfelves. Hardr. 117, 118.

The Law of Ejectments, 184

Recital of the Lease.

The Recital of a Leafe, without shewing it, ruled to be no Evidence upon a Demurrer. Ra. Entr. 318. 1 6 2 P. & M. Rot. 13. B.R. cited. Hardr. 119, 120.

Counterpart of a Leafe.

A Copy of the Counterpart of a Leafe, the Leafe being loft, allowed to be Evidence.

Seals broken off.

Tho' the Seals be broken off a Leafe, yet the Deed may be given in Evidence. 1 Mod. Rep. fol. 11. Q. if the Deed be pleadable.

Copy of Courc-Roll.

A Copy of a Court-Roll may be given in Evidence, where the Rolls are loft or not loft.

15 Car. 2. B. R_Snow and Capler.

Difference between pleading a Deed, and giving it in Evidence.

For if a Deed be pleaded, the Party must shew it in Court; but if it be given in Evidence, it is not necessary to shew it, if it can otherwise be proved to a Jury; for Winnesses may prove the Contents of a Deed or Will. and so the Jury may find them, the Deed or Will not being found in bac verba. Stiles p. 34. Wright and Pinder.

A Deed made before Time of Memory. Ancient Deed:

A Deed made before the Time of Memory, may be given in Evidence, tho' it cannot be pleaded. An ancient Deed is good Evidence without proving, or Seal to it. P. 17 Car. 2. B. R. Wright and Sherrard.

Will. Probate.

A Will, under which a Title of Land is made, must be shewed it self; and the Probate is not sufficient: Contra, if it were on a Circumstance, or as Inducement, or that the Will remain in Chancery or other Court by Special Order of such Court. 1 Keb. 117. Eden and Thalkill. 2 Rolls 678. So is Brett's. A Probate of a Will by Witnesses for Lands, is not Evidence at Common Law. And nothing gan be given in Evidence against the Probate of

a Will, but Forgery of it, or its being obtained by Surprize, and so it's Conclusive. Raym.

405.

Error was brought of a Judgment in C. B. in Ireland in Ejectment: The Question was upon a Bill of Exception, for that the Juffices Bill of Excepof the Bench there would not direct the Jury, tions on the that the Probate of a Will before the Archbi- Will. shop of Canterbury (the Testator dving in his Province) and also the Bilhop of Fernes, were fufficient and conclusive Evidence, but only affirmed it was good Evidence, leaving it to the Jury. To which the other Party shews in Evidence, Letters of Administration of the Goods under Seal of the Primate of Ireland. The Title was for a Leafe for Years in Ireland, claimed by the Lessor of the Plaintiff under the faid Administrator: And Judgment was affirmed per Curiam.

Where Bills, Answers, Depositions, &c. in Chancery, shall be good in Evidence in this Action, or not.

In Ejectment, the Defendant that made Ti- Bill preferred tle as a Purchasor under a Devisee, and shew- by the Heir ed only a Bill in Chancery preferred by the Dvisee, ser-Heir, under whom the Leffor of the Plaintiff ting forth the claims against the Devilee, whereby the Will Will. was fet forth, and confessed in the Answer. But per Curiam it is no Evidence, tho' a Posfession were proved accordingly in the Devifee, and that this had been confessed by the Plaintiff in a former Trial. 2 Keb. 35. Evans and Herbert. And yet in I Ventr. p. 66. A Bill

Bill in Chancery was faid to be given in Evi-

On a Trial in Ejectment, it was shewed for

dence against the Complainant.

Evidence, That the Defendant P. was guilty of Simony for giving 100 l. per Annum to M. the Patron; and to prove this, they shewed a Bond conditioned to pay 100 l. per Annum generally: And they fay, That an Action of Debt was brought against P. and P. had pre. ferred his Bill in Chancery to be relieved against this Bond, and by it disclosed that it was entred into for the Cause aforesaid. to that it was answered, That P. was present ed by G. but it appeared that G. acted as a Ser. vant to M. the Patron; and it was opposed. That this Bill is no Evidence, because it only contains Matter suggested, perhaps by the Council or Sollicitor, without the Privity of the Party. But per Curiam, the Copy of the Bill shall be read as Evidence, for it shall not be intended it was preferred without the Privity of the Party, and it being disclosed by the Party himself; otherwise they would not allow a Bill in Evidence, if there be not Anfwer and other Proceedings upon it. Siderf. p. 220. Dr. Crawley's Cafe.

But at a Trial, the Plaintiff, to prove his Bond, offered a Bill by the Defendant in Chancery, which Keeling Chief Justice held good Evidence, as in the Parson of Amersham's Case Dr. Crawley, where a Bill by P. a Simoniac, to be relieved against his Bond, was admitted against himself; this being the Drift of the Bill, and not any particular Allegation: But

the Court would not allow it.

Where a Copy of a Bill shall be read as Evidence. Evi-

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Where an Answer in Chancery shall be good Evidence at a Trial, or not.

In a Trial at Bar between Mills and Bernarlifton, an Answer of L. M. surviving Trustee. nder whom the Plaintiff claimed, was offerd for Evidence; but being after a Conveynce by him, the Court refused; but had it een before, it would be good against all laiming under him. But Twisden denied it, Answer good ecause an Answer does not discover the against the whole Truth, and therefore shall be only ad- Defendant nitted against the Party himself that made it, himself, but nd not of one Defendant against another, not against nuch less against a Stranger, 2 Car. 2. B. R. other Parties. And by Ley, Chamberlain and Dodderidge, a Defendant's Answer in an English Court, is a good Evidence to be given to a Jury against he Defendant himself, but it is no good Evilence against other Parties, Godb. Case, 418. Rolls Rep. 211. Berisford and Phillips. And the Defendant's Answer be read to the Juy, it is not binding to the Jury, and it may e read to them by the Affent of the Parties. Godb. 326.

An Infant answered a Bill in Chancery by Infant's Anis Guardian; and it was a Question in Leigh swer by nd Ward's Case, in a Trial at Bar in Ejectment, to be read in where the Infant was Party, whether that An Evidence wer could be read in Evidence against the against the nfant? This Question was sent from the Infant. King's Bench by Justice Eyres to the Common-Pleas to know their Opinion; and per totam Curiam it could not be read; for there is no Reason that what the Guardian swears in his Aniwer.

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Answer, should affect the Infant. 2 Ventr, I William and Mary.

Where, and in what Cases Depositions shall be read at a Trial, and where not.

Depositions if the Party be alive.

Regularly the Depositions in Chancery or no Evidence, Exchequer, of a Witness, shall not be given in Evidence, if be be alive : But if Affidavit be made that he is dead, they shall in a Cause between the same Parties, Plaintiffs and Defendants. Godb. p. 193. Sir Francis Fortescue.

Depositions no Evidence. without an Answer put in.

Depositions taken in Chancery in perpetum rei memoriam, upon a Bill for that purpose exhibited, cannot be given in Evidence in a Trial at Law, unless there be an Answer put in and produced. Hardr. 236. Raymund Watti's Cafe.

Depositions before Commissioners of Bankrupts. no Evidence at a Trial.

Depositions taken before Commissioners of Bankrupts, shall not be used as Evidence at a Trial, altho' the Witnesses be dead; but De. politions taken before the Coroner, with Proof that the Party made them, if dead, shall be good Evidence. P. 18 Car. 2. Bick and Browning.

Exemplifica. tion of Depolitions.

Exemplification of Depositions under the Great Seal, 988. whereby a Conveyance made in 986. was lost and proved: Per Cur', being so old, and the Records of the Rolls burnt fince, it is good Evidence, tho' the Bill and Answer were not in it. 2 Keb. 31.

In Ejectment for Lands in Kent, it was held upon Evidence by the Court, and by Advice of other Judges, whom one of the Barons was fent to confult, That if one Witness be examined for the Defendant de bene effe to

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preserve his Testimony upon a Bill preserred, Examination and before Answer, and upon an Order of taken before Court for his Examination made upon hearn po Evidence, no Evidence, no Gouncil on both Sides; and if after Hardr. 315. Answer the Witness die before he be exami- Brown's Cafe. hed again, he being fick all the while, yet the Examination of fuch a Witness shall not be read in Evidence, because it was taken beore Issue joined.

Divers Depositions in Chancery taken de bene Depositions Me, without Answer of the Defendant, were De bene effe. broduced in Evidence; but the Court refused o permit the Reading of fuch Depositions for Default of the Answer; and it was agreed, That the Court is not bound to such Evilence; but the Course in such Case is by Orler of Chancery to require the adverse Party admit fuch Evidence; but this doth not ind the Courts of the Common Law, Sir Thopas Jones p. 164. Poricye's Cale.

Two were made Parties to a Bill, one had litle, but the other does not claim Title, ut in his Answer sets forth many Things which made for the Title of the other Deendant: And between other Parties in B. R. hese Depositions were prayed to be admited in Evidence to prove the same Title; ut it was not suffered, because whatever the Pefendant saith, he saith it in Defence of imlelf, and partially. And Chamberlain Julice said, The Answer of a Defendant is ot good Evidence for any Purpole but gainst himself. 2 Rolls Rep. 211. Berisford and billips.

The Law of Ejeaments. 190

A voluntary Affidavit made before a Mar fter of the Chancery, cannot be given in Evidence at a Trial. Stiles 446.

Decree or De-

Decree or Decretal Order under the Exche. cretal Order, quer-Seal, which recites the Proceedings; and if it have Bill and Answer, allowed to be read. I Keb. 21. Trowel and Castle.

PEDIGREE.

In Ejectione Firme for the Barony of Cocker. mouth and the Lands, &c. the Leffor shewed an Inquisition in tempore R. 2. and finds an Intail to Henry Earl Piercy, and derives his Title under his Third Son, and offers in Evidence Dugdale's Baronage, but it was not allowed.

In Ejestment, the Earl of Thanet makes his Title by a Gift in Tail by King Edward II. to Robert de Clifford, and the Heirs of his Bo dy; and to prove him to be Heir of the Body of the faid Robert, he produceth a Chart of his Pedigree; which (deriving him from the faid Robert) shews him to be his Heir. And Sir William Dug dale and other Heralds being Iworn, they affirm that the Chart was deduced out of the Records and Ancient Books in the Heralds Office; but the Court would not allow this for Evidence, without shewing the Books and Records out of which they were deduced. And after an Ancient Book was shewed by them, which was allowed for Evidence; Sir Thomas Jones 224. Earl of Thanet's Cafe.

Office found, is no concluding Evidence Sir Tho. Fones 224.

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A convicted Person pardoned, is good Evi- Convicted dence.

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Depositions taken in Chancery of Persons doned. who are dead, may, by Order of the Court of Deposition. Chancery, be receiv'd as Evidence to a Jury upon a Trial at the Bar by the Plaintiff or Defendant, or both; and if the Depositions were taken in the Cause which is to be tried at the Bar and between the same Persons that are Plaintiff and Defendant in the Trial: But the Copy of the Bill and Answer must be first proved. Showre 363.

The Defendant in Ejectment on Trial of a Bar gave Evidence by an Inspeximus of a Lease Inspeximus. by the Abbot of Bermondsey, which the Court disallowed, being a private Deed, and may be forged; and Inspeximus lies only of Matter of Record, whereupon Allowance of the faid Deed was shewed in the Court of Augmentation, which per Cur' is good against the King.

2 Keb. 294. Kerby and Prodger. If one produce a Leafe made upon an Leafe made Outlawry, in Evidence to a Jury to prove a upon an Out-Title, he must also produce the Outlawry it lawry. felf; but if it be to prove other Matter, he need not shew the Outlawry, but may have the Leafe duly read in Evidence. So it is of an Extent, without shewing the Statute or Judgment on which the Extent is grounded. P. 1655. B. Supra, in a Trial at Bar between folmion and Spencer. Private Mf. Report.

It was agreed in Ejectment in Vaughan and Sir Henry Andrews's Case, Car. 2. B. R. ger Cur, That a Deed of Bargain and Sale given Deed of Barin Evidence is good between the Parties, al- gain and Sale. tho' no Consideration were paid, but against

The Law of Ejeaments. 192

a Creditor or Purchafor, not only a good Consideration must be shewed in the Deed.

but Payment also.

A former Morgage.

In Ejectment, the Defendant shall not give in Evidence a former Morgage or Conveyance made by himself; therefore in such Cases it's left for him that hath the former Morgage to get himself made Defendant before the Caule comes to Trial.

What is to be proved in Evidence for a Rectory.

In Ejectione Firme for a Rectory, the Leffor of the Plaintiff was required to prove in Evidence after he had proved Admission, Institution and Induction, his reading of the Articles, and fubscribing them and his Declaration in the Church, of his free and full As. fent and Confent to all Things contained in the Book of Common-Prayer, and this ought to be proved to be done within the Time limited by the Statute; and per Cur', in Ejectione Firme, Admission, Institution and Induction, (with the Matters aforesaid) is good Title, without shewing any Right in him that prefents him. I Sid. 220. Snow and Phillips.

Probate of a Will.

The Probate of a Will was adjudged to be good Evidence, to prove that the Testator made an Executor.

The Court will not permit the Jury upon a Trial at Bar to carry any Writings with them out of the Court as Evidence for them to confider of, but fuch as are under Seal, and have

been proved in Court.

The Copy of the Probate of a Will shall be allowed Evidence for Goods only, but not for Lands; for as to Lands, it is but a Copy of a Copy, which cannot be given in Evi dence. 1 Levinz 25. the Evidence which 2 dead

dead Person gave in a former Trial was of- Evidence of a fered, but denied, because they had not a dead Person. Copy of the Record of the Trial where the Evidence was given.

Upon a Trial at Bar in Ejectment, a Mortgage Deed enrolled Seven Years after the Date, (the Original being lost) was allowed Deed lost. for Evidence upon slight Proof, That there was such a Deed. 4 W. & M. B. R.

A Counterpart of a Deed was allowed to Counterpart.

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Eviich a dead Fraud or no Fraud within the Stat. 31 El. Fraud given c. 5. may be given in Evidence on the gene- in Evidence. ral Issue, Anderson's Case. Where a Deed in- Deed in-rolled doth not pass the Estate, yet it shall be rolled. Evidence to some Purposes. Vid. 3 Levinz 287.

A Recital of a Deed is no Evidence with Recital of a out procuring of the Deed it felf, or an In- Deed.

rolment of it. 2 Levinz 189.

Where there are several Witnesses to a All the Witnesses, and they are all dead but one, who nesses dead cannot be found, you shall not be admitted to prove the dead Men's Hands until you have taken out a Subpæna against the living Man, and made strict Enquiry after him, and have Affidavit of this Matter, and also that he cannot be found; but if you can prove them all dead, then you need only to prove their Hands; therefore covet not to have too many Witnesses to a Deed.

Where the Probate of a Will is produced Evidence of in Evidence, the Defendant cannot say it was the Probate a forged Will, or that the Testator was Non of a Will. Compos Mentis; but Evidence may be given

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The Law of Ejemments.

that the Seal was forged, or that there were not Bona Notabilia. I Lezinz 226.

Counterpart Lease without Witnesses.

A Counterpart of an ancient Leafe withof an ancient out Witnesses produced by a Grandson, and found amongst other Writings of his Grandfathers, were allowed to be good Evidence.

I Levinz 25.

A Sister is examined a Witness in Chancery for her Brother, concerning his Inheritance; the Brother dies, and the Estate descends to her with other Sisters as Co-heirs to the Brother, afterwards there comes to be a Trial in B. C. for this Estate; in which Cause the Sister, who was the examined Witness in Chancery, was one of the Plaintiffs, and the Question was, Whether her Deposition should be read for the Plaintiff? And upon Mr. Justice Tracy's going to the Queen's-Bench, and conferring with the Justices there, and making his Report upon his Return to the Common-Pleas, it was adjudged that her Depositions should not be read. Hill. 2 Anna B.C., A Patron in Ejectment is never allowed to be a Witness to maintain the Title of his Clerk. 4 Mod. 17.

Depolitions of a Sifter to whom the Estate descended after.

Patron.

Elegit given in Evidence.

Bail.

Witness examined in the Country by reason of Sickness.

When he that fued an Elegit brings Ejectment to try the Title; on Not guilty pleaded, he must in Evidence shew the Elegit filed. One who is Bail to an Action, cannot be a Witness for the Defendant.

A Witness who by reason of Sickness, extream old Age, or other Cause, cannot come to a Trial, may by Order of Court be examined in the Country before any Judge of the Court where the Cause depends, in the Prefence

Presence of the Attorneys of each Side, and the Testimony so taken shall be allowed to

be given in Evidence at the Trial.

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If a Witness be served with the Process of Refuse to any of the Courts of Record, to give his Te. come ad testimony concerning any Matter depending in stificandum, being Subpare fuch Court, and having tendered to him, ac-na'd. cording to his Calling, fuch reasonable Sum of Money for his Costs and Charges, as having Regard to the Distance of the Places is necessary to be allowed, doth not according to the Tenor of the Process, having no lawful and reasonable Impediments, appear in Court to give his Evidence. If it be in a Civil Cause, the Party may have his Action on the Statute 5 El. c. 9. Sect. 12. to recover 10 l. together with further Recompence to the Party grieved, as by the Discretion of the Judge of the Court out of which the Process issued, shall be awarded according to the Loss and Hindrance fustained by the Party who procured such Process. But if it be in a Criminal Cause, the Court, if they think fit, may grant an Attachment.

Inhabitants, if in a Corporation, if they Inhabitants are not free of the Corporation, may be ad- of a Corporamitted as Witnesses for the Corporation at a tion. Trial which concerns the Corporation, for their Interest is no Ways concerned, and Fayour is not a good Exception against a Witness, altho' it be against a Juror, because the Testimony of a Witness is lest to the Jury to credit or not to credit, as they shall find Cause, and so it is not binding to the Jury : But the Jury's Verdict, be it true or false, is

binding to the Party.

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The Law of Ejeaments.

Examination in perpetuum rei Memoriam.

The Examination of Witnesses which were of Witnesses, taken in perpetuum rei Memoriam, ought not to be made use of at a Trial, unless the Witnesses so examined be dead; for they were only examined for their Tellimonies to be preserved, and to be made Use of only in case they should die before the Trial.

One concerned not in the Title, tho' no Party to the Suir.

One that is any Ways concerned in the same Title of the Land in Question, may not be allowed as a Witness in the Cause, altho' he be no Ways than a Party to the Suit, for his Testimony tends to the Corroboration of his own Title, and therefore shall not be prefumed to be indifferent.

If one who gave Evidence in a former Trial be dead, then upon Proof of his Death. any Person who heard him give Evidence and observed it, shall be admitted to give the same Evidence as the deceased Party gave, provided it be between the same Parties.

Of former Verdict in Evidence.

In Trial at Bar in Ejectment, M. P. Anno 1678, made a Settlement by Leafe and Releafe to her self for Life, then to the Trustees to support contingent Remainders, then to her First, Second and Third Sons in Tail Males, with Remainders over.

It was objected the had Power to make no such Settlement, because in the Year 1676, her Husband had fettled the faid Lands on her for Life, and upon the Issue of his Body. and for Want of such Issue, upon George Philpot in Tail Male, with Remainders over, the Remainder to Mary Philpot in Fee, provided that upon Tender of a Guinea to George Philpot

Hear-fay.

by the said Mary, the Limitations as to him should be void. George Philpot makes a Lease to try the Title, the Trustees brought an Ejectment; but because the Tender of the Guinea could not be proved, there was a Verdict for the Desendant.

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ed oot by And now George Philpot would have given that Verdict in Evidence at this Trial, but was not suffered by the Court: For,

If one Man hath a Title to several Lands, and if he should bring Ejectments against several Desendants, and recover against one, he shall not give that Verdict in Evidence against the rest, because the Party against whom that Verdict was had may be relieved against it if it were not good; but the rest cannot, tho' they claim under the same Title, and all make the same Desence.

So if two Tenants will defend a Title in Ejectment, and a Verdict should be had against one of them, it shall not be read against the other, unless by Rule of Court.

But if an Ancestor hath a Verdict, the Heir may give it in Evidence, because he is privy to it; for he who produceth a Verdict must be either Party or Privy to it, and it shall never be received against different Persons, if it doth not appear that they are united in Interest; therefore a Verdict against A. shall never be read against B. for it may happen that one did not make a good Desence, which the other may do.

But the Tender of the Guinea was now proved. 3 Mod. 141. Lock and Norbarn.

Ford versus Lord Grey. Mich. 2 Anna.

On a Trial at Bar in Ejectment, the Statute of Limitations being pleaded, these several Points were ruled upon Evidence.

1. That the Possession of one Jointenant is the Possession of the other, so as to pre-

vent the Statute.

How an En-

2. That in proving an Entry and claim it's try and Claim necessary, 1. To prove the Claim to be upto be proved. on the Land claimed (without special Cause.)

2. That it be Animo Clamandi.

3. A Man makes an Answer in Chancery prejudicial to his Title, and after conveys away his Estate; this Answer cannot be read against the Alienee by any claiming under the Alienor.

Recital of Deeds in Evidence.

4. That the Recital of a Lease in a Deed of Release is a good Evidence of a Lease against the Releasor, and those that claim under him.

s. A line was produced, but no Deed declaring the Uses, but a Deed was offered in Evidence, which did recite a Deed of the Limitation of the Uses; and the Question was, Whether this was Evidence? And per Cur', the bare Recital of a Deed is not Evidence, but if it could be proved that such a Lease had been and loft, it would do if it were recited in another; and it not being proved that ever there was a Deed leading the Ules of the Fine, the Council on the one Side oppoled the Deed of Recitals being at all read; but the Court said, we cannot hinder the Reading

Reading of a Deed under Seal, but what Use is to be made of it, is another Thing.

6. A Deed bore Date 22 Car. 2. Anno Dom. Anno Dom. 11671. and notwithstanding that Mistake, the mistaken. Year of the Lord being certain, all is well.

7. If there be two Jointenants in Fee, and one of them levies a Fine of the Whole, this Fine by one amounts to no Ouster of his Companion, Jointenant. but it's a Severance of the Jointure, though he be in of the old Use again.

8. A Deed of Title to the Lessor of the Plaintiff of a Vill, supposed (except Black- Entry upon Acre) the Statute of Limitation being plead- Exception, ed, and an Entry and Claim being offered how to be in Evidence to avoid it, they were put to proved. prove the Entry to have been in another

Place than was excepted.

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What Matter may or must be pleaded, and what Matter may or must be given in Evidence.

It is a Rule in Law, in all fuch Actions Regu'a. wherein one cannot plead, there the Matter to be pleaded shall be given in Evidence, and found per Verdict; but where the Party may plead the same, is to be pleaded by Therefore in Ejectione Firme, Trespass, Gc. in Action on the Stat. 5 R. 2. cap. 7. and other personal Actions, a collateral War- Collateral ranty cannot be pleaded in Bar; but he shall Warranty gihave the Benefit of it, by giving the lame in ven in Evi-Evidence to a Jury, and the same is to be dence. found by Verdict of the Jury; so is Seymor's Cale, 10 Rep. 97. That collateral Warranty

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The Law of Ejeaments.

may be given in Evidence on Not guilty pleaded in Ejectione Firme, because in that and other personal Actions, that may not be pleaded in Bar. 1 Bulftr. 166, 167. Haywood and Smith. 10 Rep. 97. Seymor's Case, I Rep. Chudley's Case.

Condition to Jury.

The Jury may find a Condition to Dedefeat a Free- feat a Freehold of Land, altho' it be not hold found by pleaded; but of Things in Grant, they must also find the Deed of the Condition, 21

A/. 14.

Estoppel found by Jury.

The Jury may find Estoppel, which cannot be pleaded, and Estoppels which bind the Interest of the Land, as the taking a Lease of a Man's own Land, by Deed indented, and the like, being specially found by the Jury, the Court ought to judge according to the Special Matter. 2 Rep. 4. God. dard's Cafe.

Note, A. brought Ejectione Firme against B. who pleads Not guilty, and in Evidence it appears that C. a Stranger had the best Title; now the Court ought to direct the Jury to find for the Defendant, because in this Action the Plaintiff ought to make a good Title for his Leffor, and fo in opening of the Evidence for the Plaintiff, the Council for the Plaintiff usually saith so to the Jury. Alias in Trespass. Com. 431. 545.b. 546. a.

What Evidence the Jury shall have with them after Evidence given.

The Jury may not carry any other Evidence with them, but what is delivered to them by the Court, and shewn in Evidence. Upon Evidence to a Jury, to prove J. S. to be Heir to W. S. The Court will not accept the Pedigree drawn by an Herald at Arms for Evidence, nor will suffer the Jury to have it with them; it's but only Information for Direction, P. 8 Jac. B. Plumton and Robinson.

If an Exemplification comes out of Chancery, of Witnesses there examined upon Oath who are dead, the Jury shall have it with them; not so if some are living and some are dead, P. 10 Jac. B. Tomlinson and Croke.

If after Evidence given to the Jury at the Bar, and they depart, the Sollicitor of the Plaintiff come to them and delivers to them a Church-Book, to take an Age which was given to them, in Evidence before at the Bar, and there shewed to them, and after they found for the Plaintiff; yet this shall not avoid the Verdict, because it was no other than what was given to them in Evidence before, Vicars and Farthing's Case.

What shall be good Evidence to make Title in several special Cases.

A Verdict for the Lessee is good Evidence for a Reversion in Ejectment. Hardr. 472.

The Law of Ejeciments.

As to a Rectory, the taking of Tythes only no good Evidence of Ejectment.

In Ejectment of a Rectory, the Evidence was of the taking of Tythes only, and not Entry into the Glebe, and the Plaintiff was nonsuit; so it was in Perry and Wheeler's Case. I Keb. 368. for a Rectory consists of Glebe and Tythes. Latch 62. Hems and Stroud.

What Things

• Parson in
the Ejectment
of a Rectory
must prove.

A Parson in the Ejectment of a Rectory, (if he will make out his Title) must prove Admission, Institution and Induction; his reading and subscribing the Articles, &c. and his Declaration in the Church of his sull and free Assent and Consent to all the Things contained in the Common-Prayer; and this must be proved to be done within the Time limited by the Statute, but he need not to shew a Right in him that presented him. 2 Keb. 48. Siders. 221. Dr. Crawley's Case.

Institution without Prefentation proved no Evidence.

In Evidence, an Institution without Presentation, or Copy of it, was refused in Court; albeit a Presentation may be made by Parol, but Proof must be made of it Ibid.

Admission, Institution and Induction upon the Presentation of a Stranger, is a good Matter to bar him, who had Right in an Ejection Firme, and to put him to his Quare Impedit. Sid. 221. Dr. Crawley's Case.

Evidence as to an Appropriation. In Ejectment, the Defendant had a Leafe of a Prebend made in tempore Hen. 8. and expired; and he now claimed a Leafe from a nominal Prebendary thereof, founded in the Cathedral Church of Lincoln. The Plaintiff claimed under Letters Patents from King

King James I. and the Possession was according to this Grant; and it was a Question. If they ought to shew how it came to the Crown: But the Possession having gone with it, the Court did presume the Grant to King James to be loft, and Judgment pro Quer. as in the Case of an Impropriation: Hales being Councel, it was insisted, the Impropriation was Presentative till Ed. 4th's Time, and could not be appropriated without the King's Licence, quod Curia concessit, and he could not produce the Licence; yet because it was enjoyed ever since Edward the 4th's Time as Appropriate, the Court did intend a Licence, and that the Patent was loft before the Inrolment, and a Verdict accordingly, P. 27 Car. 2. Coterel's Cafe.

In Ejectment for a feveral Fishing: On Not Where conguilty, if the Plaintiff derive a Title as high stant Enjoyas the Abbies, he need not shew any Patent, ment good Evidence. or Derivation from the Crown; but the constant Enjoyment is sufficient, unless one be fued by the Crown. 14 Car. 2. B. R. Sir Chr.

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In Evidence to a Jury at Bar, the Defendant made Title by the Feoffment of the Lord M. to his Son in Law the Earl of C. on which there was no Livery nor Incolment, but both lived together; but the Father was reputed Owner, and paid the Rates, and a Year after released and confirmed to his Son and his Heirs; and this Title was opposed, because there was never any Inception of an Estate at Will, no Entry being proved by the Son after the Deeds made. But per Cur',

The Law of Ejeaments.

What Entry fhall be intended, and need not be proved.

the Feoffment with future Conveyances is fufficient, both living together, the Entry shall be intended, and need not be specially proved; whereupon the Plaintiff was nonfuited. M. 20 Car. 2. B. R. Dunaston and Sir Ferom Whichcoat.

Extent of a Rectory on Elegit.

In Berry and Wheeler's Case in Ejectment, the Council excepted to an Extent, under which the Plaintiff claimed, because after Execution of Fieri facias for Part, Elegit was for the Whole, without mentioning any Thing levied by the former Elegit which recited the Fieri facias, but was returned Nibil, sed non allocatur. 2. It was further objected, That it appears, that more than a Moiety is extended: For it's faid, That the Defendant was feized of a Rectory, of the Value of 100 l. and other Lands appurtenant, que quidem Rectoria sine terris Glebalibus is the Moiety. But per Cur', it may be understood of the Church-yard, &c. distinct from other Lands pertaining, and as long as the Extent continues, it cannot thus be denied but there is Glebe. M. 14 Car. 2, B. R. Berry and Wheeler.

In Ejectment, the Defendant shall not give in Evidence a former Mortgage or Conveyance made by himself, and therefore in fuch Cases, it's lest for him that hath the former Mortgage, to get himself made by himmade Defendant before the Cause comes to

Trial.

Long Poffeffion.

Defendant

not to give in Evidence

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felf.

Mortgage

If an ancient Deed of Feoffment be shewed, but not Livery upon it, if Possession have gone along with the Deed, this is good Evidence Evidence to a Jury to find Livery. 2 Rolls

Rep. 132.

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He which affirms the Matter in Issue, ought first to make Proof to the Jury; and when the Priories were suppressed, a Commission issued, and a Certificate upon this, upon all their Possessions, and their Values which belonged to the Priories; and therefore it is Whether Pargood Evidence in Issue, whether Land was cel of a Priories of the Priory or not, that no mention ry, Proof by Certificate upon the Commission.

Variance of the Evidence from the Declaration, or what Evidence shall be faid to maintain the Issue.

In Ejectione Firme, if the Plaintiff declares Lease by upon a Lease made by two, and gives in two, and Evidence, that one of the Lessors was Lessee one was Lessor Life, the Remainder to the other; this for for Life, a material Variance from the Declaration, Remainder to the other. In as much as this is only the Lease of the Tenant for Life. 2 Rolls Abr. 719. England and

So if a Man declare a Lease by two, Lease by where one had nothing in the Land, and so two, where oid as to him; yet this is a material Varione had nonce, id. ibid. So if a Man declare of a Lease Land. nade by Baron and Feme, and gives in Evi-

ence a Leafe made by the Husband only,

this is a material Variance.

So it is, if a Man declare of a joint By joint Lease made by two, and it appeareth upon Lease, and the Evidence, That the two Lessors were nant in Common.

Tenants

The Law of Efectments.

Tenants in Common, and so several Leases: this is a material Variance. But otherwise it is, if it appear upon the Evidence, that the two Lessors were Copartners, for this is one Lease being made by them. Cr. Fac. 166. Mantler's Cale

The Acres and Leafe of a Moiety.

Copartners.

If the Declaration be of a Leafe of Three Acres, a Leafe of a Moiety in Evidence will not maintain the Declaration, for it is not the same Lease; but in Seabright's Case, B. R. 40 El. and Cooper and Franckling's Cafe, 14 Fac, Ejectione Firme of 20 Acres, the Jury found him guilty of the Moiety, and Not guilty of the Residue, the Plaintiff shall have Judgment against, Plowden 224. Brake

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and Right's Cafe.

The Declaration in Ejectment was of a Fourth Part, of a Fifth Part, in Five Parts to be divided; and the Title of the Plaintiff upon the Evidence was but of a Third Part, of a Fourth Part, of a Fifth Part in Five Parts to be divided, which is but a Third Part of that which is demanded in the Declaration: And it was said, the Plaintiff cannot Verdict to be have a Verdict, because the Verdict in such taken accord- a Case ought to agree with the Declaration; but per Cur', the Verdict may be taken according to the Title, and so it was. Qu. how the Habere fac' Possession' in such Case shall be executed. Sid. p. 229. Ablett and Skinner.

ing to the Title.

> The Plaintiff declares of a Leafe made the 14th of Fanuary, 30 El. Hab. from the Feast of Christmas then last past, for Three Years, and upon the Evidence the Plaintiff shewed a Leafe bearing Date the 13th of January Rodem

Variance as to Time.

eodem ann. And it was found by Witneffes, that the Leafe was fealed and delivered upon the Land the 13th Day. Per Cur', Notwithstanding this Variance, the Evidence is good enough to maintain this Declaration, for if a Lease was sealed and delivered the 13th Day. it was then a Lease of the 14th. 4 Leon. p. 14. Force and Foster.

The Plaintiff declared in Ejectment of Evidence of 100 Acres of Land, and shewed his Lease in fewer Acres Evidence of 40 Acres. And it was urged, than declared. That he failed of his Leafe, for there was no fuch Leafe, as that whereof he did count. But per Cur', it is good for so much as was contained in his Leafe, and for the Residue the Jury may find the Defendant Not guilty. Cr. Eliz. p. 13. Guy and Rand, and yet it is

held, 2 Rolls Abr. 72. Brown and Ells.

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If the Plaintiff declare in Ejectment upon a Leafe for Years of Three Acres, and in Evidence he shews but a Lease of a Moiety. this is a material Variance, for it is not the Ejectione Firme of fo many Ejectment of lame Lease. Acres of Meadow, and so many Acres of Meadow and Pasture. Upon Not guilty, the Jury find a Pasture, and Demise de Herbagio and Pannagio of so many is de Herbagio Acres; the Question was in Wheeler and Toul- and Pannagio. Jon's Case. Hard. 330. If this Evidence shall maintain the Issue, the Court inclined it did not. Ejectment doth lie of a Leafe of Herbage, and then by the same Reason the Plaintiff ought to declare accordingly, and Herbage doth not include all the Profit of the Soil, but part of it.

Toint-Lease Common.

The Declaration was of a Joint-Leafe by Tenants in made by Two, and on Evidence it appears they were Tenants in Common. By Three Iustices against One, it is good. Cro. Fac. 166. Mantle's Case, 83.

> Ejectment was of Lands in Oxenbope, and the Witnesses upon Examination did swear there were Two Oxenhopes, Upper and Nither, without Addition; and upon this the

Plaintiff nonfuited at York Affizes.

If a Man declare of a Leafe made by Baron and Feme, and gives in Evidence a Leafe made by the Baron only; this is a material Variance.

Note, The Day of the Filing of the Declaration in the Ejectment may be given in Evidence, where the Demise is laid the same Term. Vide Syderfin, p. 422. Per Dyer's Cafe.

Of Demurrer to the Evidence.

Demurrer on Evidence.

It was held by all the Court upon Evidence to a Jury, That if the Plaintiff in Ejectione Firme, or other Action, gives in Evidence any Matter in Writing or Record, or a Sentence in the Spiritual Court, (as it was in this Case) and the Defendant offers to demur thereupon, the Plaintiff ought to join in Demurrer, or waive the Evidence, because the Defendant shall not be compelled to put a Matter of Difficulty to the Laygents, and because there cannot be any Variance of a Matter in Writing; but if either Party offer to demur upon any Evidence given by Witness, the other, unless he pleaseth, shall not be compelled to 1011

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join, because the Credit of the Testimony is to be examined by a Jury, and the Evidence is uncertain, and may be enforced more or less. But both Parties may agree to join in Demurrer upon fuch Evidence, and if the Plaintiff produce Testimonies to prove any Matter in Fact, upon which a Question ariseth, if the Desendant admit their Testimonies to be true, he may demur: But in In the King's the Case of the King, the other Party may Case. not demur upon Evidence shewn in Writing or Record for the King, unless the King's Council will thereunto affent. But the Court in such Case shall charge the Jury to find fuch special Matter; but this is by Prerogative, who may waive the Demurrer, or take Issue at his Pleasure. Cro. Eliz. 751. Midlet and Baker, 5 Rep. 104. Baker's Cale.

And in I Inft. p. 72. If the Plaintiff in Evidence shew any Matter of Record, or Deeds, or Writings, or Sentence in the Ecclesiastical Court, or any other Matter of Evidence by Testimonies of Witnesses, or otherwise, whereupon Doubt in Law ariseth, and the Defendant offer to demur in Law thereupon, the Plaintiff cannot refuse to join in Demurrer, no more than in Demurrer on a Count, Replication, &c. and fo, & Converso, may the Plaintiff demur in Law on the Evidence of the Defendant: But the King's Council shall not be inforced to join in Demurrer. A Demurrer to Evidence never denies the Truth of the Fact, but confesseth the Fact, and denies the Law to be with the Party that shews the Fact. Plowd. Newis and Scho-

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The Law of Ejenments. 210

If a Demurrer be upon the Evidence, the Evidence ought to have enter'd verbatim. Keb. 77.

Demarter to Evidence.

Demurrer to Evidence. what.

A Demurrer to an Evidence is, when the Party that doth demur upon it doth demand the Judgment of the Court, whether the Matter given in Evidence be sufficient (admitting it to be all true) to find a Verdict for the Plaintiff upon the Issue that is joined between him and the Defendant. Pafch. 21 Car. 1. B. R. And when such Demurrer is taken, the Plaintiff and Defendant must agree the Matter in Fact in Dispute between them, otherwise the Court cannot proceed to determine the Matter in Law, but there must be a Venire de novo to try it. And the Judges of the Court cannot try a Matter of Fact in Que. stion upon a Demurrer to an Evidence, and therefore the Plaintiff and Defendant must agree upon it, and confess it, for else the Court will not proceed to deliver their Opinions touching the Matter in Law demurred And upon the Demurrer the Jury are to be discharged, and not to pass upon the Trial, but the Matter of Law (in Que stion) upon the Demurrer is referred to the Judges.

Matter of Fact to be agreed.

> Matter in Law is not to be given in Evidence, and the adverse Party may demur to

fuch Evidence. 3 H, 6. 36.

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In a Demurrer upon Evidence, the Party There must demurred unto may demand Judgment of the be colourable Matter for Court, whether he ought to join in the De- the Demurmurrer or not; for if there be not a co- rer, or elfethe lourable Matter for to ground the Demurrer Court will upon, the Court will not force the Party to not force to join in it, but will over-rule it. 23 Car. 1. join.

B. R. The usual Course is, when there is Demur- The usual rer upon the Evidence, to discharge the Jury; Course when and if Judgment be given for the Plaintiff, murrer to the to have a Writ of Enquiry of Damages; tho' Evidence. formerly when the Jury by the Demurrer were discharged of the Issue, yet would affels The Jury to Damages conditionally if the Judgment should affels Damabe for the Plaintiff. Cro. Car. 143. Darrose ges condiand Newbort. And fo it's faid per Reg', upon Demurrer to an Evidence, the Court did direct the Jury who should have tried the Issue if the Demurrer had not been to find Damages for the Plaintiff, if upon arguing the Demurrer the Court should give Judgment for him, Pasch. 23 Car. 1. For the Jury may consider of the Matter of Fact which should have been tried, if the Evidence had not been

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Upon Evidence in Ejectment it was resol- If the Plainved per Cur', That if the Plaintiff in Evidence tiff shew any shew any Matter in Writing or of Record, Matter in or any Sentence in the Ecclesiastical Court, of Record, on upon which a Question in Law ariseth, and which a Quethe Defendant offer to demur in Law upon stion in Law it, the Plaintiff may not refuse to join in ariseth, and Demurrer, but he ought to join in Demur- the Defendant demurs, the rer, or waive his Evidence. So if the Plain-Plaintiff may tiff produce Witnesses to prove any Matter in not refuse to

Fact, join.

So of a Matwhich Law arifeth.

Fact, upon which a Question in Law ariseth, ter of Fact on if the Defendant admits their Testimony to be true, there also the Desendant may demur in Law upon it; but then he ought to admit the Evidence given by the Plaintiff to be true, and the Reason is, because Matter of Law shall not be put into the Mouth of the Lay. gents. So may the Plaintiff demur upon the Evidence of the Defendant, mutatis mutandis. 5 Rep.

King's Council shall not be compelled to join in Demurrer.

But if the Evidence be given for the King in Information, or any other Suit, and the Defendant offers to demur upon it, the King's Council shall not be compelled to join in Demurrer; but in such Case the Court may direct the Jury to find the special Matter, and upon this they shall adjudge the Law. this is by the King's Prerogative, who also may waive Demurrer, and take Issue at his 5 Rep. 104. Baker's Cafe. Pleafure.

Demurrer upon Evidence cannot be for a Thing which the Jury may know of their

own Conisance. 1 Levin. 87.

If there be a Demurrer to an Evidence, the Fact is to be returned upon the Record, and appear to the Court, so that they may determine whether the Evidence appearing before them is sufficient to maintain the Action, which if it doth, they thereupon give Judgment for the Plaintiff, if not, then for the Defendant.

Vide Allen Rep. 18. Wright and Paul Pindar. As for Precedents of Demurring to the Evi-Vide the last Part of Trials per Pais. dence.

t

Exemplification of a Verdict.

A Verdict against one, whom either the Plaintiff or Defendant claims, may be given in Evidence against the Party so claimed. Contra, if neither claim under it. Mich. 1656.

B. R. Duke and Ventnes.

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If a Verdict pass for Two Defendants, although by Default of one's not putting in Bail they may not have Judgment, yet they may exemplify their Verdict, to give this in Evidence to another Jury. 2 Rolls Rep. 46. Dennis and Bremblecot.

In Ejectment brought by a Reversioner, or Debt upon the Statute of Tythes, Edw. 6. brought by a Proprietor of Tythes, after a Verdict at Law; the Lessee or the present Proprietor, the Reversioner of the Lands or Tythes, shall have Advantage of the Verdict, and give it in Evidence: And the Reasons are, because they cannot be immediate Parties to the Action or Suit, for that must be profecuted by the Lessee or present Tenant, and they may give in Evidence, as well as the Plaintiff himself. Hard. 2 Rep. 472.

> CHAP. P 3

CHAP. XII.

Rules for Learning of special Verdicts. Of Estoppels found by the Jury, and bow they shall bind. What is a material Variance between the Declaration and Verdict. Of Pri. ority of Possession. Where the special Conclusion of the Verdict shall aid the Imperfe. Stions of it. Where, and in what Cases, the Verdicts make the Declaration good. Verdiet special taken according to Intent. Difference where the Verdiet concludes specially on one Point, and where it concludes in general, or between the special Conclusion of the Jury, and their Reference to the Court. Circumstances on a special Verdict, need not be precisely found. Where the Judges are not bound by the Conclusion of the Jury. Of Certainty and Uncertainty in a special Verdict. Of the finding Quo ad residuum, Certainty or Uncertainty in Reference to Acres, Parifles, Vills, Place. Of Verdict being taken by Parcels. How the Ejectment of a Manor to be brought. Of a Verdict, on other Lease or Date than is declared upon, which shall to be good or not. Of the Juries finding Parcel. Where Verdict Shall be good for Part, and word for the Residue. The Time of the Entry of the Plaintiff's Lessor, where material. Where the Jun pugbt to find an actual Ouster on bim that

Prout lex postulat, bow had the Right. to be understood. Where, and in what Cafes. special Verdict may be amended.

A General Verdict.

TF at a Trial at Bar there be Matter in I Law, and the Judges agree to it, and fo the Jury do not find it specially, but give a general Verdict, the Judgment shall be according to the Verdict, and cannot be flay'd.

I Bulftr. 118. Platt and Sleep.

Ejectment of Seven Messuages five Tenementis, is ill after a general Verdict; and it's ill on Demurrer; but this might have been helped by taking Verdict of either. So it is where Ejectment is de Messuagio & Tenemento. it's ill after a general Verdict, 2 Keb. 80, 82. Burbury and Yeoman. In this Cafe the Verdict was general for the Plaintiff for the Messuages, and Non Culp' for the Tenements, it feems it had been good. But Hales Chief Baron refused to allow of such finding in And it was faid by the the Home Circuit. Court, as this Case is, the Plaintiff may not aid himself per releasing of Part, as perhaps he might, had there been Lands also in the Declaration. 295 Mesme Case.

But first, I shall set down Two or Three Councilto Things observable as Rules or Directions of subscribe the the Court, in reference to special Ver. Points in Question.

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It was made a Rule of Court, That in Special Vera finding of special Verdicts where the Points dict. are fingle, and not complicated, and no P 4 ipecial

special Conclusions; the Council, if requi-

ed, shall subscribe the Points in Question, and agree to amend the Omissions or Missakes in the mean Conveyances according to the Truth, to bring the Points in Question to Judgment. It was likewise order'd in Roll's Time, That the unnecessary finding of Deeds in bac verba upon special Verdicts, where the Question rests not upon them, but are only derivative of Title, shall be spared and found briefly according to the Substance they bear in reference to the Deed, be

it Feoffment, Lease, Grant, &c.

Note, In 2 Rolls Rep. 331. An Attachment
was awarded against the Desendants, because
they would not bring in their Evidence for
to have a special Verdict in Ejectione Firme;
and this by the Course of the Court, because

there is no other Remedy.

Entry, Demise, and Ejectment, sound by special Verdict.

Et qd' idem T. K. intravit in tenementa in-frascript', & fuit inde seit' prout Lex postulat' qd' idem 1. K. sic inde seit' existen' postea scilt' vice-simo die præd' mensis Octob' Anno decimo sexto supradict' dimisit præfat' G. C. tenementa illa cum pertin' in narratione præd' mentionat' habend' & tenend' tenementa illa cum pertin' ead' G. C. a sesto Sancti Mich. Archang' tunc ult' preterit' usq; sinem & terminum quinq; Annorum extunc prox' sequen' & plenarie complend' & siniend', ac qd' virtute ejusdem dimissioni idem G in tenementa illa cum pertin' intravit & suit inde possissionat' qd' ipse præsat' G. sic inde possessionat' existen'

Of finding Deeds in bec werba.

Attachment against the Defendant, because he would not bring in his Evidences. existen' prædict' F. G. postea scilt' eod' 20 die Octob' Anno decimo sexto supradict' in ead' tenementa cum pertin' in & sup' possessionem inde intravit & ipsum a sirma sua prædict' ejecit. Sed utrum, &c.

As to the Rules of Special Verdict.

Estoppels, which bind the Interest of the Estoppels. Interest of the Lands, as the taking of a found by the Man's own Land by Deed indented, and the Jury. like being specially found by the Jury, the Court ought to judge according to the special Matter; for the Estoppels regularly must be pleaded, and relied upon by apt Conclusion, and the Jury is sworn ad veritatem dicendam; yet when they find veritatem factis, they pursue well their Oath, and the Court ought to judge according to Law. So may the Jury find a Warranty, being given in Evidence, tho' it be not pleaded, 10 Rep. 97. Vide supra tit. Evidence. And if the Jury find the Truth, the Court shall adjudge it to be a void Leafe. Vide Cro. Eliz. 140. Sutton and Rawlins's Case.

In Ejestment, if it appear by the Record Priority of of a special Verdict, that the Plaintiff had Possession Priority of Possession, and no Title be prowhere a ved for the Desendant, the Plaintiff shall good Title have Judgment, as in Coryton's Case. J. Hiblin was seised in Fee of the Lands in Question, and by his Last Will deviseth unto A. H. Lessor of the Plaintiff, if my Son T. H. happen to have no Issue Male after the Death of my Wise; and if he have Issue Male, then 5 l. to be paid to A. H. The Devisor died seised,

leaving

leaving Issue, Thomas, who had R. Issue Male. Anne the Wife of the Devisor survives him. and after dies; and they find that A. and Eliz, were Sifters and Coheirs of the faid R. the Issue Male, who died without Issue. And they found the Entry of the Lessor of the Plaintiff, and the Leafe to the Plaintiff prout in the Declaration; and that the Defendant as Guardian to A. and Eliz. oufted him. The Points in Law in this Case were not argued, because it appears by the Record, that the Lessor had Priority of Posses fion, and there is not any Title found for the Defendant: For though it be found that A. and E. were Coheirs to the Issue Male that is to no Purpole, because it was not found that they were Heirs of the Devisor; and the Estate Tail (admitting it were so) appear to be spent by the Death of Thomas Hiblin without Heir Male, and so they had no Ti tle; and then the Priority of Possession only gives a good Title to the Leffor of the Plain tiff against the Desendant and all the World besides, but only against the Heir of the De visor. 2 Sanders 112. Allen and Rivington.

In Bateman and Allen's Case there was special Verdict in Ejectment, sed utrum the Entry of the Desendant upon the Matter be lawn or not, they pray Advice. And if the Entry were lawful, the find for the Desendant if not, &c. Now forasmuch as in all the Verdict it is not found that the Desendant had the primer Possession, nor that he enter'd in the Right, or by the Command any who had Title; but it is found he enter'd upon the Possession of the Plaintiss with

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out any Title, his Entry is not lawful, and the Plaintiff had good Cause of Action against him, wherefore the Plaintiff shall recover, and fo held all the Court; wherefore they would not hear any Argument as to Matter of Law. But if the Conclusion of the Verdict had been fi, &c. whether the Entry of Hill and his Wife were lawful or not, then the Judgment should have been upon Matter in Law; for that it should be intended that the Defendant had Title, if the Lessor of the Plaintiff had no Title, and that the Plaintiff had not Cause of Action. but now not. Craw and Ramsey. Vide infra, Cro. El. 427. Bateman and Allen. Plo. Nervus & Scholastica.

Special Verdict finds W. B. seised, and devised the Reversion of all Messuages (except in D.) to the Heirs of the Devisor, and that Tho. B. was Brother and Heir, and enter'd and leased to the Plaintiss till the Desendant ejected him, and have sound no Title for the Desendant: Now being there is no Title found for the Desendant, nor of what Land this Ejectment was, (viz.) That it was not of that devised before the Verdict, is impersect, and otherwise the Plaintiss must have had Judgment upon the prior Possession.

In Graw and Ramsey's Case, 2 Vent. 3. the Jury find that Patrick, who was the Issue born in England, enter'd and was seised, but that he, Anno Dom. 1651. did bargain and sell, virtute cujus the Bargainees were seised prout Lex postulat, and then bargained and sold it in 1662. Wild and Archer were of Opinion, That the Plaintiff could not have Judgment upon

upon that Verdict, for that they and their

Bargainees seised prout Lex postulat; but they find the Defendant enter'd, and so the primer Possession is in him, which is a good Title against the Plaintiff, for whom none is found, it being not found that Patrick enter'd. But Tirrel and Vaughan said, It shall be intended that Patrick enter'd; for a Verdict that leaves all the Matter at large to the Judgment of the Court, will be taken sometimes by Intendment, as well as where the Jury conclude upon a special Point, Cro. Fac. 64. The Jury find an Incumbent refigned, it shall be intended the Resignation was accepted. So Hob. 262. And where they find the Bargainees seised prout Lex postulat, that doth not leave it doubtful, whether feised or not seised, but whether by Right or by Wrong, for Seisin must be taken dant hath pri- as found expresly, neither do they find any other in Possession; yet however, if the Defendant had primer Possession, he shall not have Judgment, if no other Title be found for him, as in Cro. Car. 57. Hern and Allen. The Husband makes a Feoffment in Fee with Warranty, and takes back an Estate to

> without an Entry. 2 Bulft. 31, 32. Ejectione Firme of the Rectory of M. of the Leafe of Henry Fowler, and that the Lessor was presented by the Lord Windsor upon

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him and his Wife for their Lives, &c. Husband dies, the Wife enters; the Question was, If the Entry of the Wife shall remit to the Estate-Tail? But the Jury find the Husband was feised prout Lex postulat, but no Entry by him; and no Remitter can be wrought

Intendment.

Pout Lex po-Aulat.

If the Defenmer Possession first, he shall not have Judgment if no other Title be found for him.

Deprivation of A. L. Upon Evidence it appeared, That the Advowson was the Inheritance of the Lord Windsor, who granted the next Avoidance thereof to Dr. G. Church became void. Fowler, Father of Henry, by Simony procures Henry to be prefented, who was inflituted and inducted; and so the King presented A. L. who was asterwards deprived. But Ten Days before, Richard Fowler procures a Grant of the next Avoidance to J. S. and procures J. S. to present Henry Fowler. Per Cur', his Presentation is meerly void, he being disabled ever after to take the same Place; and every one who is in Postession hath good Title against him and his Leffee, fo as the Plaintiff cannot maintain this Action. Cro. Jac. 522. Booth and Rich. Potter.

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If the Plaintiff hath not Title according to his Declaration, he cannot recover, whether the Defendant hath Title or not, and whether he be a Disseisor or not; as where an Infant makes a Lease at Will, who enters and ousts the Plaintiff, and the Plaintiff brings Ejectment. Vide 1 Leon. 211. Cotton's Case.

Ejectione Firme was brought upon a Lease made by Roan of the Rectory of, &c. Special Verdict found: Glover put in a Caveat to the Bishop in the Life of the Incumbent; the Incumbent dies, and afterwards by the Presentation of Mantle, Morgan was instituted. And after Wingfeild presents Glover, who was instituted and inducted; and after the King presents his Clerk Roan, who was inducted; and after Morgan was inducted;

and

and after Roan enters, and lets to the Plaintiff, who upon the Entry of the Defendant brought his Action. Now Morgan was inflituted, and after Glover was inducted, which was void; but by that he had the Possesfion, and afterwards Roan the Prefentee of the King is inducted; and after Morgan is inducted; and after Roan enters, and Glover enters upon him: The Question was, Who had better Possession, Roan or Glover? Per tot' Cur', Roan had the better Possession, if it be admitted that the King had not any Title to present; for though Glover had the first Possession, yet his Possession was deseated by the Induction of Morgan, who had the true Right; and then when Roan enters upon him, he had the first Possession, and better Right against any other prater Mor. gan, and by Confequence the Action will lie by the Leffee of Roan against Glover. Moor 191. Hicthorn and Glover.

Declar' on Five Years, Jury found but Three Years. Ejectment, and declares upon a Lease for Five Years; and upon Not guilty, the Jury finds that the Lessor of the Plaintist had only a Term for Three Years, & si, &c. Hale and Wild held this Verdict to be against the Plaintist, for the Judgment shall be, That the Plaintist shall recover Terminum suam pradict, which is Five Years, and the Lessor's Interest doth not continue so long: And perhaps the Desendant may be hish in Reversion after the Three Years ended, and then by this Means the Lessor of the Plaintist shall recover the Land for Two Years more than he had Right to hold it. 2 Levin. Roe versus Williamson.

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On special Verdict it was found that it was Copyhold, Parcel of the Manor of S. demisable for Three Lives, and that by the Cultom of the Manor the first Name in the Copy should enjoy it during his Life, & fie successive; and that the Lord A. granted it by Copy to Alice W. R. W. and F. W. her Sons for Three Lives; that R. W. made Waft in cutting down Timber-Trees. Lord A. feized it, and granted it by Copy to the Lessor of the Plaintist for his Life, and after licensed him to let Tenements infra script' in quibus, &c. for Five Years, if F. the Leffor of the Plaintiff fo long lived; that he let to the Plaintiff for Three Years, who enter'd, and the Defendant oulted him. Et & super totam, &c. per Cur', inalmuch as it is a good Leafe made to the Plaintiff, and no Title at all appears for the Defendant, but that he enter'd upon the Plaintiff's Possession, and not by Command of any who had Right. although there were some Matter between the Plaintiff and the first Copyholder, yet Judgment ought to be pro Quer'. Cro. Fac. 436. Worledge and Benbury.

So in Powel and Goodard's Case, Trim.

21 Car. 2. B. R. in Ejettment, special Verdict finds W. G. seised in Fee, and devised that P. and J. G. should be Trustees, and take the Profits till the full Age of H. G. whom he makes his Heir. W. G. doth authorize his Feosses to sell so much of his Lands for Payment of Debts and Funeral Charges as in their Discretions shall seem meet. The Feosses for 80 l. Lease for 99 Years to begin after the Death of R. G. and his Wise, to Three,

ficient Title.

Priority a fuf-

tiff: It was found at the Time of the Sale. that all the Debts were paid. Per Cur', the Fee being given away from the Heir of the Devisor, Priority of Title is a sufficient Posfession, unless some Title be found for the Defendant; and primer Possession is good where neither Party hath Title. And in this Case the Lease was adjudged void, the Truflees not being enabled to fell farther than to

Three. One whereof is Lessor of the Plain.

latisty Debts.

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In Ejectment, prior Posses-

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Title against

Presentation.

In Wallis's Case, Stiles Rep. 291. special mer Possession Verdict was on a Copyhold Custom, the primer Possession will make a Disseisin, if the Cuftom be not well found. It was not found in that Case that the Land was demisable according to the Will of the Lord, and fo it may be Free Land, and the Custom did not extend to it; nor is it found that the Parties to whom the Letter of Attorney was made to furrender, were customory Tenants, and then the primer Possession by the Defendant will make a Disseisin; and Judg. ment pro Quer'.

In Ejectment, prior Possession is a good Title against the King's Presentation, but not so in a Quare Impedit; for there the Incumbent ought (although Defendant) to make a Title against the King's Presentation with out Title, as is the Book 7 H. 4. 31. but if the Incumbent be in by Entry of his own Head, without Presentation, it is not sufficient in either. I Keb. 502. Brown and

Spencer.

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2. The special Verdict is good, Si constare Si constare popoterit, that it is the same Place and the terit, that it is fame Land in the Declaration mentioned, the fame Land, it is good. although it be not found expresly; and although the Jury find not that it is the same Land in the Declaration mentioned, yet if they find the Entry and Ejectment according to the Declaration, it is sufficient; and therefore the Mistake of a Letter, or Addition of a Word, shall not hurt the Verdict, Si constare poterit, &c. Siderf. p. 27. Houre and Dix.

4. In many Cases the special Conclusion The special of a special Verdict shall aid the Imperfe Conclusion of ctions of it. If the Jury find a special Ver- diff hall sid dict, and refer the Law upon that special Mat- the Importeter to the Court, although they do not find &ions of it. any Title for the Defendant, which is a collateral Thing to the Point which they refer to the Court, yet the Verdict is good enough; for all other Things shall be intended, except this which is referred to the Court. in Ejectment, if the Plaintiff declare upon a Lease made by A. and the Jury find a special Verdict and Matter in Law upon a Power of Revocation of Uses by an Indenture and Limitation of new Uses, and then a Leafe for Years made to the Plaintiff by the Leffor in the Declaration, and another in which there is a perfect Variance. But they conclude the Verdict, and refer to the Court, whether a Grant of a new Estate. found in the Verdict be a Revocation of the first Indenture or not? The special Conclusion shall aid the Verdict, so that the Court cannot take Notice of the Variance 0 be-

between the Leafe in the Declaration and

Intent.

Wherethe Verd & is Conclusion ill.

Diversity becial Conclufion.

A foecial Verdict may make the Declaration good.

the Verdict, because the Doubt touching the Revocation is only referred to the Court. And although they refer to the Court, whether this be a Revocation of the first Indenture, and not of the former Uses, or Limitation of new Uses, at it ought to be; yet in a Verdict this is good, for their Intention But where the Jury find speciappears. ally, and furthermore conclude against Law, the Verdict is good, and the Conclusion is good, and the ill, and the Court will give Jugment upon the special Matter, without having Regard to the Conclusion of the Jury, 5 Rep. 97. Litt. Rep. 125. 2 Keb. 362, 412. 11 Rep. 10. Moor 105, 269. So note this Diversity bebetween a ge- tween a special Conclusion of the Jury and neral Conc'u- Reference to the Court, and a general Confion and a spe- clusion and Reference to the Court. cife Verdict may make the Declaration good. which otherwise would be ill, as the Declaration is of Lands in Sutton Coefeild; and the Verdict finds the Lands in Sutton Cole. feild, and the Deed is of Lands in parva Sutton infra Dominium de Sutton Colefeild; fo neither the Verdict nor Deed agree with the Declaration for the Vill where the Lands lie, therefore no Judgment ought to be given. But per Cur', the Verdict finding Seisin de infra script' Messuag', that is, quasi an express Averment; and finding that Sutton Coefeild and Suiton Colefeild & parva Sutton infra Dominium Sutton Colefeild, are all one, and that they be all in one Parish, and this

> being in a Verdict when the Jury found Quad dedit tenementa infra script' by Name in the

> > Deed,

Deed, shall be intended all one. So it's aided by the finding of the Jury, who find expresly that the Bishop dedit Tenementa infra script'. Cro. fac. 175. Ward and Walthow, Yelv. p. 101.

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7. The Judges are not bound by the Con- Leafe. clusion of the Jury, as in Ejectment on a Void the Jury find Leafe, that if the Entry of the Daughter was not congeable, the Defendant is guilty. Now the Judges are not bound by the Conclusion of the Jury, but may judge according to Law, as 10 Ed. 4. f. 70. Trespals was brought against the Lord for distraining; the Jury found for the Plaintiff: But because the Statute of Marlbridge is, non ideo puniatur Dominus, &c. the Court shall adjudge for the Defendant. So is the Rule in Plowd. Com. 114. b. when the Verdict finds the Fact, but concludes upon it contrary to Law, the Court shall reject the Conclusion, as in Amy Townsend's Case. Jury find precifely that the Wife was remitted, which was contrary to Law; for their Office is to judge of Matters of Fact, and not what the Law is. So if the Jury collect the Contents of a Deed, and also find the Deed in hac verba, the Court is not to judge upon their Collection, but upon the Deed it lelf. Moor, p. 105. Lane and Cooper.

And yet the Court is sometimes bound by the Conclusion of the Jury; as in Ejectione Firme of one Acre, the Jury find the Defendant guilty of one Moiety, and a special Verdict for the Residue, and conclude if the Court shall find him guilty of all, then, Occ. The Plaintiff cannot have Judgment upon this

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for a Moiety, if the Court shall not adjudge him guilty of the whole for the special Con-I Rolls Rep. 429. clusion cited.

Verdi& to be taken accord-

6. Special Verdict shall be taken accord. ing to Intent, and the Court must make no ing to Intent. more Doubts than the Jury does, the finding Matter of Fact being only the Jurors Office, as & Rep. Goodales's Cafe. The Doubt was, whether the Payment of 100 l. with Agreement to have some Part of it back again, were sufficient upon a Condition to defeat the Estate of a Stranger? The Court regarded not that there was no Title found for the Party that made the Entry, whereupon Ejectione Firme the Action was brought. was brought by G. against W. Upon Not guilty, the Jury concluded their Doubt upon Performance of a Condition by Payment of Money by Sir J. P. to one W. but yet, in making up their Verdict, they had given the Possession to the Plaintiff by Leafe, and laid the Entry upon him by W. without any Title under Sir 7. P. but that was included, and so not regarded. Hen. 55. 262.

When the Verdict concludes specially on one Point, the Court shall doubt of no more than the Jury doubts; Secus where it concludes in the General.

General Conclusion depends upon all the Points of the Verdia.

7. But if the Jury conclude upon the General, whether the Defendant's Entry were lawful or not; which is all one, as if they had referr'd to the Court whether he be This depends upon all the guilty or not. Points of the Verdict indifferently, that may prove him Guilty or Not guilty, Hob. 262. So is Caftle and Hobb's Cafe, Cro. Fac. 22. The Verdict was on the paffing by Letters Patents, and the Jury found, that if they were good Letters Patents, then for the

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the Defendant, otherwise they sound for the Plaintiff, and they find no Title for the Plaintiff. But it is intended, there is a sufficient Title sound for the Plaintiff, unless by this Patent it be deseated and avoided; so that if the Jury be satisfied that the Plaintiff hath any good Right by any other manner of Title, the Court ought not to doubt thereos.

How and in what Cases special Verdicts shall be taken by Intent or Presumption, and what Things shall be supplied.

I devise all those my Lands in Shelford, called Somerby, to W. in Tail, Remainder over: And it is not found per Verdict that those Lands in the Action are called Somersby. But per Cur'; For as much as the contrary is not found, it shall be intended that he had not other Lands in Shalford than those which were called Somersby, though that Name be not at first given them; for it was, [I devise all my Lands in Shalford to his Wise for Life, and the Remainder in Tail,] prout ante. Cro. Eliz. 828, Peck and Channel.

It shall be intended, that the Reversion continues in the Party; as if a special Verdict find that A. was possessed for Years of Land, and that the Reversion in Fee was in B. and that A. devise the Term to C. after Reversion the Death of M. whom he makes his Execussiall be intor, and dies, and M. enters, and during his tended to continue, C. after releaseth his Possibility to B. and it is not found that the Reversion continued in B. at the Time of the Release; yet

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it shall be intended to continue in him in a Verdict, it being found to be once in him by the same Verdict before. P. 12 Car. 1. B. R. Fobuson and Trumper.

Where a Life shall be intended to be in Being.

tute Literar'

do not find

der Seal.

A Life shall be intended to be in Being though not found, as was Fretzvil and Molineux's Case. If the Jury find the Title of the Plaintiff to be under one, who was Leffee for Life, and they find the Estate for Life, but do not find the Tenant for Life is alive, the Life shall be intended and supplied, the Conclusion and Reference to the Court being upon other Matter. Special Verdict in Eject-ment found, that J. J. was deprived by the High Commissioners of a Benefice, and it Jury find Vir- is found in this Manner: That fuch Perfons authorizati virtute Literar' Patent' Eliz. Reg', and it is not found that the Letters Pathey were untents were under the Great Seal; yet this is good, and shall be intended in a Verdict. Tr. 13 Car. I. B. R. Allen and Nash.

In Ejectment, the Verdict was on a Proviso of Revocation of Uses, That it should be lawful for the Covenantor, being in perfect Health and Memory, under his Hand and Seal, and by him delivered in the Presence of Three credible Witnesses, &c. It was agreed, That though the Verdict do not find the Covenantor was in perfect Health and Memory, yet that was well enough, for it shall

What shall be be presumed except the contrary were shewprefumed un- ed, and so for the Presence of credible and trary be thew-Presence of sufficient Subsidy-Men. Hob. 212.

Kibbet and Lec.

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If the Jury find that \mathcal{F} , was feifed in Fee, and devised the Land to \mathcal{F} . D. although they do not find the Land was held in Socage, yet that is good; for this shall be intended, it being a collateral Thing, and it being the most common Tenure.

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If the Jury find that J. S. was seized in Devise. Fee, and made his Will in bac verba, and that he afterwards died; although they do not find he died seised, yet it shall be intended he died seised, and so good. But,

If the Jury finds the Words of the Will, and yet do not find the Will, the Verdict is not good.

And if the Jury find a Bargain and Sale, Bargain and and a Fine, and do not mention Involment Sale. or Proclamations, it shall not be intended. Hob. 262.

In Ejectione Firme the Verdict finds that Extent. E. D. the Lessor and Conisor, was seised in Tail of the Manor of B. at the Time of the Recognizance, and that this Manor was delivered in Extent; but he doth not say that the Lands in the Declaration were Parcel of the said Manor, and so it's not sound that this Land was delivered in Extent, and then the Defendant had no Title. Per Cur', It's not material, it shall be intended in a special Verdict, otherwise there is no Cause of a special Verdict. Cro. Car. 458. Cleve and Vere.

It was objected in Corbet and Stones's Cafe, P. 1653. B.C. The Jury find that after a Fine levied, and before the Ejectment, the Interest of M.C. F. B. and K. B. of the Lands in Question, come to the Lessor of the Q4 Plain-

That the Interest of the Lands came to the Leffor, how.

Plaintiff, but shews not how. But per Cur', it is good enough, for when the Jury finds the Interest comes to the Lessor, the Court but flaws not intends all Circumstances that shall conduce to that Fact; for the Court doubts not when the Jury doubts not. 4 Rep. 67. Fullwood's Cafe.

> The Jury find that 7. C. came before the Recorder of London and Mayor of the Staple, and acknowledged himself to T. R. in 200 l. Exception was taken, that there was no finding of any Statute there; for it was found that this was secundum formam Statuti, and that it was by Writing. But per Cur'it's good enough, for all Circumstances shall be

intended. Raym. 150.

And there is another Rule in our Books pursuant to this last, in a special Verdict the Circumstances shall be intended, or in a special Verdict the Circumstances of every Thing need not to be fo strictly found as in Pleading. As in Ejectment, the Jury found he delivered the Leafe upon the Land, but found not that he had enter'd and claimed, Cr. Eliz. 167. Willis and Fermin. And in Goodall's Case, 5 Rep. it was resolved, That . all Matters in a special Verdict shall be intended and supplied, but only that which the Jury refer to the Confideration of the Court.

Also in Molineux's Case, Cro. Fac. 146. it was excepted to a special Verdict, That the Life of B. who was Tenant for Life, and the Lessor in the Action, was not found. But per Cur', it shall not be intended that she is dead, unless it be found. And in a special

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In a special Verdict all necessary Circumitances. shall be in tended.

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cial Verdict, all necessary Circumstances shall be intended, unless found to the contrary: But some Things the Court shall Some Things not intend, as in Sadler and Draper's Case, shall not be Sir Thomas Jones, p. 17. where the Case was, intended. Whether the next of the Blood being of the half Blood, i. e. whether the Brother of the half Blood of the Mother of an Infant, shall be Guardian in Socage of Land by Difcent on the Part of the Father, Cro. Eliz. 825. But because the Verdict did not find that the Leffor of the Plaintiff, who claims to be Guardian in Socage, was proximus in sanguine à quel, &c. that the Court shall not intend it, and so no Title found pro Quer. Ideo nil. cap. per Bill.

If the Jury find a Special Verdict, (viz.) A. deviseth his Lands to his Executors quousque they shall levy such Money, or his Heirs shall pay to them the said Sum, and conclude upon the Matter si, &c. but they do not find the Heir had not paid the Money. This quousque the Heir pay the Difference Money, is Parcel of the Limitation of the between the Estate which ought to have been found: Condition and Limitation of the Court, who is to judge upon tion of an the whole Matter, shall not intend it. Ir. Estate, as to 19 Fac. B. R. Langley and Pain. But if in the Finding Special Verdict, the Jury find J. S. was by the Jury. eiled in Fee of Land, and made his Will. and by it deviseth all his Estate to B. paying Debts and Legacies, and refer to the Court the Matter in Law, (viz.) whether a Fee passeth by this, but find not that B. had paid the Debt and Legacies; yet this is good Verdict, because it is a Condition

properly, and not a Limitation. Tr. 1651. Tohnson and Kerman; yet if the Verdia find that 7. S. was feised in Fee of Land. and posses'd of certain Leases for Years of other Lands, and by his Will deviseth his Leases to J. D. and after deviseth to his Executors all the Residue of his Estate. Mortgages, &c. his Debts being paid, and his Funeral Expences discharged; this was not a perfect Verdict, the Matter in Law referred to the Court being, whether the Executors had an Estate in Fee by this Devise, in as much as it is not found that the Debu were paid, Oc. which is a Condition precedent, so as the Executors cannot have it till the Debts paid, and venire de novo granted. Hill. 10 Car. 1, B. R. Wilkinson's Case, Vide 2 Leon, 152. Allen and Hill's Case, Condition must be punctually found.

Finding the Substance of the Issue is sufficient.

To this Purpose it is laid down often in our Books as a Rule, That if the Jury sind the Substance of the Issue, it is sufficient, as in Ejectment of a Manor: If the Jury sind there were no Freeholders, and so it is no Manor in Law; yet it being a Manor in Reputation, and so the Tenants pass by the Leases, therefore this Verdict is sound for him who pleads the Lease of the Manor, so the Substance is whether Bargain and Sale de modo Irrotulat, and not said in Six Months, it's good in a Verdict, but not in a Plea. 3 Keb. 180. Vide supra, Corbet and Stones's Case.

If in Ejectment a Lease is pleaded of a Manor, &c. and the Issue is, Quod non dimiss Manerium, and the Jury give a Special Ver-

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dict. That there were not any Freeholders but diverse Copyholders of the Manor, and that it was known by the Name of a Manor. tho' it was not any Manor in Law for Default of Freeholders; and tho' this was alledged in Pleading to be a Manor, which Manor in Re-Pleading is made by learned Men, and tho' putation, and this was in an Action adversary and not amicable; yet for as much as the Issue is triable by the Lay gents, and in Truth the Tenements in which, &c. pass by the Lease, the Verdict is found for him that pleads the Leafe of the Manor, for the Substance of the Issue is, whether it were demiled or not, Vines and Durbam's Case cited. 6 Rep. 77. in Sir Moyle Fincheb's Cafe.

not in strict

8. It is a Rule in Law, in such Actions in What one which one cannot plead, there the Matter to cannot plead, be pleaded shall be found by Verdict, and shall be found this well; but where the Party may plead, there the fame is to be pleaded by him. 1 Bulftr. 166.

by Verdict.

The Jury may find a Warranty being given in Evidence, for in Ejectment from Trefpass, and in Act on the Statute of 5 R. 2. cap. 7. a Warranty is not to be pleaded (or other personal Action): The Nature of a Warranty, and to have Benefit thereby, is to be by Way of Voucher and Rebutter in a real Action, and must plead or lose the Benefit of it; but in personal Actions, collateral Warranty cannot be pleaded by Way of Bar; yet it may be given in Evidence to a Jury, and the same is to be found by Verdict of the Jury. Vid. ibid. Herwood and Smub.

9. If

9. If any Thing be omitted in the Declaration, or if more is put in the Declaration than is found by the Jury, if it makes a material Variance between the Declaration and the Verdict, the Action shall abate; as if a Declaration in Ejectment be of a Lease of three Acres, a Lease of a Moiety will not warrant the Declaration: But if the Variance be by Way of Surplus or Desect, if it be not material in the Extenuation of the Action, or Damages, Action will lie.

Verdict by Prefumption.

10. The Jury may give a Verdict by Pre. Sumption, as to find Livery in respect of long Possession; but if they find the Matter Specially, the Court will not adjudge this a Livery. 1 Rolls Rep. 122.

11. A Verdict that finds part of the Issue, and nothing for the Residue, is sufficient, Vide

poftea:

12. Fraud ought not to be prefumed, unless it be expressly found. 2 Rep. 25. 10 Rep. 56, Cr. Gar. 549. Crisp and Pratt.

Where and in what Cases Entry must be express found or not, and of the Force of the Word, Prout lex postulat.

In Horewood and Holman's Case, 2 Bulft. 29. Lands are given to the Use of a Man and his Wife, the Remainder to the Heirs of the Body of the Husband; the Husband makes a Feoffment in Fee with Warranty, and takes back an Estate to him and his Wise for their Lives, the Remainder over to make a Remitter to the Wise, there ought to be an Entry,

try, and no new Entry is found by the Spe. To make a cial Verdict to be by the Husband, but only Remitter, prout lex postulat. The Court advised a new there must be a new Entry. Trial, and to amend the Special Verdict, Prout lex poand to find the Entry of the Baron and fulat.

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The Time of the Entry of the Plaintiff is The Time of sometimes material, as in Fort and Berkley's the Entry of Case. Per Cur', In that Case, which Way the Plaintiff's Lessor. foever the Law had been taken, Judgment could not have been given for the Defendant. There was a Lease made to Godolphin in Reversion, under whom the Plaintiff claims. Chersey the Lossor of the Plaintiff did enter upon the Possession of Berkley the Defendant, but when he did enter does not appear; then the Case is, Berkley was in Possesfion. If the Lessor of the Plaintiff enter'd before the Term began, he was a Disseisor as it was. Dyer 89. Clifford's Case. But it's said he was posses'd prout lex postulat, as so he was of Prout lex pothe Reversion too, it does not appear but that fulas. he was a Disseisor, and so continued. Carter's Rep. 159, 160.

If the Title appear to be in a Stranger, Where aftual they must find an Ouster made to him who Ouster must had the Right. And therefore in Ejectione Firme, If the Jury find a Special Verdict, being Matter in Law upon a Lease for Years, referving Rent upon Condition, &c. but no Title is found for the Plaintiff nor Detendant; but it is only found, that the Leffor of the Plaintiff being a Stranger enters into the Land and leafeth this to the Plaintiff, by which the Plaintiff was possels'd prout lex postulat, until the Desendant entred and ejected

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eiected him; this is not a good Verdict, the Title appearing to be in a Stranger, without any actual Ouster made to him who had the Right, 2 Rolls Abr. 699. Bland and Imman

In an Ejectione Firme, the Jury find a Special Verdict, and find Special Matter in Law, whether J. S. had Right to the Land, upon which the Court adjudged, That he has Right to the Land. But they find farther, That J. D. entered into the Land up. on 7. S. and was thereof seized prout lex po. stulat, and made the Lease to the Plaintiff, and the Lessee was by Force of this posses sed, and it is not found that 7. D. disseised F. S. and for that, upon this Verdict shall not be intended that J. D. ousted J. S. and diffeifed him, and then the Entry of 7. D. and his Lease is void, and so an Action does not lie against a Stranger, who had nothing in the Land, as was Hitchin and Glover's Cafe.

In Ejectione Firme by the Lessee of a Col. lege, if the Jury find a Special Verdict in this Manner, (viz.) That the College let this to A. upon Condition, and found a Special Matter in Law, whether the Condition be broken, and that the College supposing the Condition broken, by their Bailiff entred, and let this to the Plaintiff, this is not a good Special Verdict, without finding of a Command given by the College to the Bailiff to enter, to be by Deed, for otherwise it is not good. 2 Rolls Abr. p. 700. Dumper and Simms.

Entry by a College, how to be found.

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A. was feifed, and demifed to his Executors the Lands in Question for the Performance of his Will, till the Executors levy 100 Marks, or until his Heirs pay to them 200 Marks, and that the Executors after his Death entred and were posses'd Prout lex po- Prout lex postulat, and being so posses'd, granted to the stulat, how Plaintiff, who entred and was posses'd till far extend. the Ejectment. This is uncertain, because it is not found that the Heir had paid the Money, for they say Super totam Materiam, Super totam and to fay Prout lex postulat, is not an Affir- Materiam. mation of any certain Possession. Palmer 192. Langly and Paine.

Of the Juries finding by Parcels.

It is a Rule; A Verdict that finds part Verdict that of the Issue, and nothing for the Residue, is finds Part of Insufficient. As in Pemble and Sterne's Case, thing for the Raym. 165. The Demise is laid of a Park Residue, is in-Messuage 200 Acres of Land, and the Ver. sufficient. dict finds only as to Parcel, and nothing of the Residue for the Plaintiff or the Desendant; the Verdict is void, so is the Rule. I Inst. p. 227. A Verdict that finds part of the Issue, and finding nothing of the Residue, it is Insufficient for the Whole, because they have not tried the whole Issue wherewith they are charged. Car. Jac. 113. Ejectione Firme of a Lease of Messuages, 2000—Acres of Land, 3000 Acres of Palture in D. per nomina of Monkbal, and 5 Closes per nomina. On Not guilty the Jury gave a Special Verdict, (viz.) quoad 4 Closes of Pasture, containing by Estimation

Quoad refid.

mation 2000 Acres of Pasture, that the De. fendant was not guilty, Quoad resid. they find the Matter in Law; this Verdict is imperfect in all, for when the Jury find that the Defen. dant was not guilty of 4 Closes of Pasture, containing by Estimation 2000 Acres of Pasture, it is not certain, and it doth not appear of how much they acquit him, and then when they find quoad residuum for the Special Matter, it is uncertain what that Residue is: a Venire fac' de novo was awarded, Woolmer and Caston's Case. But if the Verdict be of more than declared for, it shall be void for the Residue. As Ejectment for him who pleaded all of 14 Acres, and the Jury find guilty of 20 Acres, 14 Acres the Plaintiff shall have Judgment for, and the Verdia shall be void for the Residue. 2 Rolls Abr. 707, 719. Seabright's Cafe.

In Ejectment of a Manor, and so many Acres as includes the Manor; the Jury find for the Plaintiff as to the Manor, præter the Services; and as to the Services not guilty. And Judgment pro Quer. Here are Two manifest Errors: 1. When the Court is of a Manor, the Jury cannot find for the Plaintiff for that which is not a Manor; and there is none that brings Ejectment of a Manor, but they also add the Acres that a Manor, how contain it, to the end that if they prove it to be brought. not a Manor, they may recover according to the Acres; but they must enter it so, but not as here generally of both. Verdict being as much as the Count, the Judgment against the Plaintiff cannot be in

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Misericordia, if it be supposed good. The Court held them to be manifest Errors, and affignable by the Defendant. Hob. 108. Latch 61. Cr. Jac. 113. 1 Keb. 110. Hammond and Conisby. But I conceive that is not Law, for in Hammond and Conisby's Cafe, Ejectione Firme was of a Manor; upon Not guilty, there was a Verdict pro Quer. for the Manor, and quoad the Services Not guilty. for the Plaintiff, for the Manor, because as to the Services it is for the Defendant. But Surplus in # per Cur. The last Part of the Verdict shall be Verdict, taken general for the Plaintiff. Sid. 232. Eje. ctione Firme of a Messuage: On Not guilty, the Jury find the Defendant guilty of Two Parts of the House: It was alledged in Arrest of Judgment, That the Verdict has not found the Defendant guilty according to the Count, which is of a Messuage an entire Thing. Manwood contra: Omne majus continet in le minus; but if the Declaration had been of Two Parts of a Messuage, and on Not guilty, the Jury had found him guilty of the entire House, the Plaintiff shall not have Judgment. Savill 27.

In Ejectione Firme of a Messuage, if it be found that a little Part of the House is built by Incroachment upon the Land of the Plaintiff, and not the Residue; yet the Plaintiff hall recover for this Parcel by the Name of an House

It's laid down positive in Ablett and Skin- The Verdies ner's Case in Sid. p. 229. that the Verdict fewer Parts may be of fewer Parts than in the Declara- than the Das

tion : claration;

R

tion: As on Trial at Bar in Ejectment, the Declaration was of a Fourth Part of a Fifth Part in five Parts to be divided, and the Title of the Plaintiff upon the Evidence was but of a Third Part of a Fourth Part of a Fifth Part in five Parts to be divided, which is but a Third Part of what is demanded in the Declaration. It was faid, the Plaintiff cannot have a Verdict, because the Verdict in such Case ought to agree with the Declaration; but per Cur' the Verdict may be taken according to Title; and so it was. But Qu. how the Habere fac' shall be executed.

If the Verdict in Ejectment contain more than the Declaration, the Plaintiff may release the Damages. Q. If he may release Part

Plaintiff may of the Land. Sid. p. 412.

If the Verdict contain more than the Declaration, the Plaintiff may release his Damages.

As to a Manor.

Ejectione Firme of the Manor of Dale; on Non Culp' pleaded, the Jury find, quoad unum Messuagium parcel' Manerii prædist', guilty; quoad resid' Not guilty. It is moved he cannot have Judgment; the Action is brought of the Manor, and the Jury find him guilty of one House only, so he cannot have his Judgment according to his Demand. So De. labar and Hudlestone's Case. Ejectment of a Rectory, and upon Non culp' pleaded, the Defendant was found guilty of Tythes without the Glebe; and he could not have Judgment, the Glebe being the Principal. So Ejectione Firme of a Manor, and proves only the Rents, he shall not have Judgment. Ejed. ment was of an House, the Special Verdict was, That the Plaintiff was seised in Fee; and if there be several Things laid in Ejectione

Firme,

Firme, as House, Garden, &c. and the Jury If several find guilty of one only, the Plaintiff shall Things are have Judgment of this. In Delabar's Case, it stone Firme, was not found that the Tythes were Parcel and the Jury of the Rectory, and so it differs from this find the De-Case. In Ejectione Firme of a Manor and ten fendant guil-Acres, it is no Plea that the ten Acres are ty in one, the Parcel of the Manor; aliter in Entry in the have Judg-Nature of an Affize. Adjornatur.

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The Jury find the Defendant guilty of one Where the Moiety, and for the other Moiety a Special Jury may Verdict; this is no Error, for the Jury may conclude upconclude upon the Moiety, for it may be he on a Monty entred into one Moiety, and not into the other; but if he declares upon the Whole; they cannot find him guilty of a Moiety. 2 Bulfer, 229. Milward and Watts. But if one declares in Ejectione Firme upon a Fence made in certain Lands, and he has Title but for a Moiety, the Jury are not to conclude upon the Moiety, for they are not to judge upon this, but the Court.

ment of that.

Where a dying seised, or posses'd, must be found

A Man by his Last Will and Testament devised all his Fee-simple Lands whatsoever to his Brother, on Condition he suffer his Wife to enjoy all his Free Lands in H. during her Life, and the Jury found the Testator had only a Portion of Tythes in H. but they did not find the Teltator died leiled of the Tythes, which without doubt had been ill upon the Demurrer. And Rolls faid, He would would fee the Notes by which the Special Verdict was drawn up, if that could help it? For they all agree the Verdict ought to have found the Dying feifed. Stiles Rep. 279. Saunders and Rich.

In Ejectione Firme, if the Jury find a Special Verdict, That J. S. was seised of the Manor of D. in his Demesne as of Fee, of which Manor a Copyholder in the Place where, &c. does Walt by the Cutting down an Oak; and that after J. S. dies, and the Lessor of the Plaintiff, being his Cousin and Heir, enters into the Manor, and into the Place where, &c. for the faid Forfeiture, and was of this feifed in his Demelne, as of Fee, and concludes, Si super totam Materiam, &c: This is not a good Verdict, because it is not found that J. S. died seised of the Manor, and that this discended to the Lessor as his Coufin and Heir; for it may be 7. S. aliened the Land, and that the Father of the Lessor, or the Lessor himself, might repurchase it, and that he was also Cousin and Heir to 7. S. for although it be in a Verdict, yet it shall not be intended that the Fee continued in 7. S. at his Death, and that he died feifed thereof without finding of it. P. I Car. 1. Cormvallis and Hammond.

Of Uncertainty in Special Verdicts.

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As to Perfons. As to Acres and Parcels. As to the Place or Vill. (As to Time.

As to Perfonse

One deviseth all his Lands to E. his Wife for Life, the Remainder to F. his Daughter in Tail, the Remainder to the eldest Son of William his Brother in Tail, Remainder over. E. enters, F. dies without Issue; they find Gertrude Cousin and Heir to F. who levied a Fine, but they find not Gertrude was Heir Do not find to the Devisor; and it may be altho' F. Heir. was the Daughter, the Devilor might have a Son, or that she was Heir to him by a Second Wife, yet that Exception feemed not valid. Cr. El. 642. Hemsley and Price. So in 3 Rep. Sir George Brown's Case, Anthony is found Son but not Heir, and yet, without his being Heir, the Plaintiff had no Title: And yet in Cymbal and Sands's Case, Cro. Car. 391. Gimlet and Sands, the Court seemed to be of Opinion, That tho' the Jury found that Humfrey had Issue by Hebell his Wife, John, unicum filium suum, that not finding that he was Heir (it was in case of his being Heir to a Warranty collateral) was not good; for he might have elder Sons by another Venter, or there might be an Attainder, or the Warranty might be discharged

The Law of Ejeaments.

or released in his Life-time. 2 Rolls Abr. 701.

mesme Cafe.

The Jury found a Special Verdict on a Will, in which they found A. had Issue two Sons B. and C. and do not find which of them was the Elder, and which the Younger, which is material in the Case. This Verdict is not good; for tho' B. is first named, yet it doth not appear by this that he is the eldest Son. Mic. 20 fac. B. R. Peryn and Pearse.

Uncertainty as to Part of an House.

Part of an House.

The Court
must be informed of the
Certainty,
and it ought
to appear to
them.

The Defendant pleads Not guilty; the Jury find him Not guilty for Part, and Guilty de tanto unius Messuagii in occupatione, &c. quantum stat super Ripam. Per Cur', the Verdict is Insufficient for the Uncertainty; for tho' the Certainty may appear to the Jury; yet that is not enough; the Court ought to give Judgment, & oportet quod res deducatur in it dicium. Had they found him guilty of a Room, it had been good. So if he had been found guilty of a Third Part, for of them the Law takes Notice. And an Eje. Etione Firme was brought for the Gate-house at Westminster, and the Jury found the Defendant guilty for so much as is between such a Room and fuch a Room, and it was adjudge

Guilty of a ed good. Marsh Rep. 47. Juxon and An-Roomis good. drews.

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As to Certainty of Acres.

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Ejectione Firme was brought of 400 Acres Asto Acres. of Land; and the Jury find the Defendant, quoad all besides three Acres Parcel tenementorum prædictorum, Not guilty; and quoad the 2000d, 600. three Acres, they find Special Matter; and that G. A. the Lessor let the aforesaid three Acres to the Plaintiff, and that he was pofsessed; and that the Desendant ejected him out of the three Acres, parcel' tenementorum Parcel. prædictorum, and they did not find the Eject. ment of the aforesaid three Acres, &c. and it may be the Ejeament was of other three Acres; and for this Cause per totam Curiam held ill. Cr. El. 642. Hemfley and Price.

Ejectment of five Acres, if the Jury find the Defendant guilty in 8 Perches de terre percel' tenementorum prædictorum, it's a void Verdict, because uncertain, and no Execution can be made of Pieces. 2 Rolls Abr. 694. Pawlet and Dr. Redman.

And this is the Difference between Trefpass and Ejectment: The Plaintiff declares of Trespass in one Acre in D. and abuts it East, West, North and South. Upon Not guilty the Jury finds the Defendant guilty in dimidio Acræ infrascript', the Plaintiff shall have Judgment; and fo if they had found but one Foot of the Acre. And it sufficeth to be found in one Moiery of the Acre bounded in this Action, where Damages are only to be recovered. But if it were in Ejeelment, R 4

tain in what Part the Plaintiff must have his Hab. fac. poffeff.

It must becer- the Verdict had been ill; for it is not certain in what Part the Plaintiff shall have his Habere fac' possessionem. Yelv. p. 114. Winckworth and Man.

In Ejedione Firme the Plaintiff declares Aliter in Tres- of a Messuage, 2000 Acres of Land, 2000 Acres of Pasture in D. per nomina of the Manor of Monkall, and five Closes per nomina, The Jury gave a Special Verdict, quoad four Closes of Pasture, containing by Estima. tion 2000 Acres of Pasture, that the Desendant was not guilty; quoad residuum they find the Matter in Law. This Verdict is impersect in all; for when the Jury found the Defendant was not guilty of four Closes of Pasture. containing by Estimation 2000 Acres of Paflure, it is uncertain, and doth not appear of how much they acquit him; and then when they find quoad residuum for the Special Matter, it is uncertain what that Residue is; so there cannot be any Judgment given. And a Venire fac' de novo was awarded. Cro. Fac. 114. Woolmer and Caston.

Quead residuum must be certain.

De Meffungiis five Tenementis Verdict helps it not.

In Ejectione Firme de septem Messuagiis sive Tenementis, and Verdict pro Quer', it's ill for is ill, and the the Uncertainty, and the Verdict doth not help it. And Hales refused to let the Jury find for the Plaintiff for the Messuages, and Non culp' for the Tenements. But per Twisden, had it been de uno Messuagio sive Tenemento vocat' The Black-Swan, it had been good, because the last Part makes it certain. Sid. 195. 2 Keb. 80. Cro. El. 186.

As to Acres and Parifies.

On Special Verdict in Ejectment the Case was, the Declaration was of feveral Meffugges in the several Parishes of St. Michael,

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St. Fames, St. Peter and St. Paul, and that part of the Premisses lie in the Parish of St. Peter and St. Paul, and that there is no Parish called the Parish of St. Peter, nor none called the Parish of St. Paul. Per Cur' the Copulative (Et) shall be referred to that which is real and hath Existence, ut res magis valeat; not to make St. Peter's one Parish and St. Paul another, but to make them both one Parish, and the Words, several Parishes, are supplied by the Parishes before-mentioned, as 6 Ed. 3. Pracipe of ten Acres in A. B. and C. there the Lands must lie in every one of the Vills: but if the Præcipe were, de Manerio & de de. cem Acris in A. B. and C. there it would be well enough, tho' the Manor lay elsewhere, provided that ten Acres lay within the Vills asoresaid, for then the last Words are satisfied by the ten Acres. Hardr. 1. 330. Ingleton and Wakeman.

Yet in Thomas and Kenn's Case. P. 28 El. B. R. it's said in Dyer ult. Edit. in margine 24. b. Ejectione Firme upon Title of Land of Sir Hugh Portman, the Count was of an hundred Acres in D. and S. and Non culp' pleaded, the Jury found the Defendant ejected him of ten Acres only, and shews not them in Certain, and adjudged a good Verdict, and the Plaintiff had Judgment.

It's a Rule laid down. I Rells 784. Rhetho- Wherever ick and Chappel's Case, wherever an Acre is but one Acre but found certain, a Man may release all is found certhe rest that is uncertain, and nothing is more release all the ufual.

Of Uncertainty in a Special Verdict, in reference to the Place or Vill.

Acres in two Jury found the Defendant guilty, and fay not how many lie in one Vill, and how many in another.

Ejectione Firme of 30 Acres of Land in D. Vills, and the and S. The Defendant was found guilty of 10 Acres, and quoad residuum not guilty. And it was moved in Arrest of Judgment, That it was uncertain in which of the Ville those Lands lay; and therefore no Judgment can be given: Sed non Allocat. and adjudged pro Quer. For the Sheriff shall take his Information from the Party, for what 10 Acres the Verdict was. So is Siderf. 70 If one declares for 100 Acres of Land in two Vills, and the Jury find the Defendant guilty, this is good without faying how ma ny Acres lie in the Vill, and how many in the other: And the Sheriff ought to take No tice of this at his Peril, in making of Execu tion. And so in Dence and Dence's Case: It shall be intended, that every Acre of Land named in the Declaration lies in both Villa for fo much is prefumed by the Declaration and the Venire from both Vills. Cro. Car. 467 Portman and Morgan. Sid. p. 75. Yelv. 228 Dences's Cafe.

Trin. 43 El. Meredith and Brown. It was adjudged in B. R. that in Ejectione Firme, sup poling the Ejectment of 10 Acres, and the Jury find the Circumstances but of four Acre the Plaintiff shall recover these four Acres But Dame Baskervile's Case was in 19 Ela Affize was brought of a Park containing 60 Acres, and the Jury found the Diffeil

but of 20 Acres, and adjudged against the Plaintiff for all. But note, the Park was entire. Dyer 15. b.

As to Time.

It was a great Case between Vernon and Gray. The Ejectment was supposed the first of May; and the Jury found the Ejectment to be circa the first of May. It was held not good. Godb. 125. cited in Yarran and Bradhaw's Cafe.

Of a Verdict in other Leases, or Date, than is declared upon.

The Plaintiff declares of a Leafe by two Jury find on Copyhold-Lords, Lessors of the Plaintiff for a Demile gea Term certain; and the Jury find a De. nerally. mife generally, and do not find the Leafe whereupon the Plaintiff declares, and it may be any other Leafe which might not be determined at the Time of the Verdict, but is now fince; and the Ejectment is only found out of this, and not on the Leafe declared on. 19 Car. 2. B. C. Lenthal and Thomas.

In Ejectment, if the Plaintiff declares of fession, the a Leafe for Years made the first of May, to Jury found commence at the First of St. Michael then next enfoing (which is now past) if the Jury the Day, it's and that the Leale was made the First of June, or at any other Day before the Feast Plaintiff. of St. Michael: This is found pro Quer. for Alter, . the the Day of the Making is not material, fo that mence at a

Count of a Lease for Years in Polthe Leafe made on anoagai It the made to com-It Day to come.

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it was made to commence at a Day to come. By Foster it's the common Practice. I Rolls

Abr. 704.

But if in Ejectment the Plaintiff declares of a Leafe for Years in Possession such a Day, and the Jury sind the Lease to be made at another Day; this shall be found against the Plaintiff, because it is not the same Lease. So

it is,

If a Man in Ejectione Firme declare of a Leafe made the 5th of May, 10 Jac, Habend. from the Annunciation before for three Years; and the Jury found the Leafe to be made the 15th Day of May, 10 74. Habend, from the Annunciation before (being the same Lady. Day) for three Years: This is found against the Plaintiff, because this was a Lease in Possession at another Day (scilicet, the 15th of May) than the Plaintiff had counted, altho' it had the same Commence ment. But in Musgrave's Case it was, the Leafe in the Declaration was a Leafe made the 5th of May, 10 Fac. Habend. from the Feast of the Annunciation then last past for 21 Years extunc scilices, from the Feast of the Annunciation next enfuing. But the Leafe found by the Jury, was a Leafe made the said 5th of May, 10 Fac. per Indent. bearing Date the faid 5th Day of May, Anno 10 Jac. Habend. from the Feast of the Annunciation beate Marie Virginis tunc ultimo preterito pro termino 21 annorum prox' (equen' dat' dicte Indemure. It was adjudged pro Quer. and so affirmed in a Writ of Error. But I conceive this Case is best reported by Allen.

The Plaintiff declared, That 7. S. the 5th of May, 10 Fac. demised a House to him, Ha. bend, from the Feast of the Annunciation last past, for 21 Years extunc prox. sequend. and the Defendant the same 5th Day of May ejected him. And upon Not guilty the Jury found, that J. S. the faid 5th of May, by Indenture bearing Date the 4th of May, demiled the Houle to the Plaintiff Habend. from the Feast of the Annunciation last past, for Years next enfuing the Date hereof, fully to be compleat and ended. And upon the Verdict the Plaintiff had Judgment, which was affirmed in Scaccario. The Term began from the Feast of the Annunciation, in Computation of the 21 Years; and on the 5th of May, in Point of Interest. Allen. p. 77.

In Pope and Skinner's Case, the Plaintiff de- The Plaintiff clares of a Lease made to him the 30th Day must make his of March, 11 Jac. Habend. from the Feast Title truly. of the Annunciation next before for a Year. The Defendant traverseth the Lease Modo The Jury find a Leafe to the forma. Plaintiff on the 25th Day of March for one Year, from thence next ensuing: This is gainst the Plaintiff, for being in Ejectione firme, he demands and recovers the Term, nd therefore must make his Title. Aliter n Replevin. Hob. pag. 72. Pope and Skin-

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Ejectment of a Leafe made the 12th of December, Habend, à primi die. On Not guily, the Jury found a Leafe made in bee ver-4, which was dated the 1st of December, lab. from henceforth, but delivered the 12th

The Law of Ejeaments.

of December. It was objected, That from the Day of the Date, and from henceforth, are several Commencements, for the one begins the Day it was sealed, the other the Day after. But per Cur. They are both one, being a Computation of Time from the Time past; and both shall be pleaded to begin from the Day of the Date, when the Leafe is afterwards fealed at another Day; and if Habend, hence the Leafe be made the 1st of December, Hair henceforth, the Ejectment may be alledged the same Day. Aliter, If it be à die datu, Pro Quer. Cro. Fac. 258. Lewellin versus Wil liams.

forth.

The Averment of the Estate Tail to be found.

Where when the Party comes in by Limitation of Use, it must fay, Vigore ftat.

Diversity of Names.

Verdict finds that the Leffor of the Plain. tiff was seised in Tail of the Rectory, &c. and does not shew the Beginning of the Estate Tail, which is the particular Estate. Per Cur. It is an apparent Fault. Cr. Eliz. 407. Baker and Searle.

In the faid Case where the Party comes in by a Limitation of an Use, the Verdict saith, Virtute cujus dimissionis, and it ought to have been Et virtute Statut. Per Cur. This is an apparent Fault in Substance and Form.

The Issue in Ejectment was, if Julian the Wife of the Defendant was alive at such a Time; and the Jury found, that Jenimet the Wife of the Defendant was alive at fuch a Time. Per Cur. They shall not be adjudged one and the same Person, without finding allo by the Custom of the Country, that Women baptized by the Name of Julian, have been also called Fenimet. Moor 411. No. 560. Hum. bach and Shepard.

Verdia

Verdict as to Baron and Feme.

In Ejectione Firme against Baron and Feme. On Not guilty pleaded, and a Venire fac' granted, the Jury found the Wife not guilty, Wife found and found a Special Verdict as to the Huf- Not guilty, band, which Special Verdict is afterwards verdict as to adjudged insufficient by the Court. A Ve- the Husband. nire fac' de novo shall be awarded for both, Venire de novo. as well for the Wife as the Husband, and upon this new Writ the Wife may be found guilty, because the Record and Issue is inire; and for this their Verdict is insufficient in all, and void. 2 Rolls Abr. 722. Langly and Pain. So in Swan's Case, Stiles 412. Ejectment against Baron and Feme, and the Feme is found Ejector by the Verdict, and nothing is found concerning the Husband. nd a Venire fac' de novo was awarded, unless hey will agree to amend the Verdict accordng to the Notes.

Where, and in what Cases, Special Verdicts may be amended.

Where a Special Verdict is not entred ac- Record of a ording to the Notes, the Record may be Special Vermended, and made agree with the Notes dict amended. t any Time, tho' it be three or four Terms ter it is entred. 4 Rep. 52. 8 Rep. 162. Cr. ar. 145.

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The Law of Ejectments.

And where a Verdict is certainly given at the Trial, and uncertainly returned by the Clerk of the Affizes, &c. the Postea may be

amended, upon the Judges certifying the

Truth how the Verdict was given. Cr. Co.

Poftes where amended.

Nonfuit for Default of Warrant to try the Cause

not recorded.

328. The Plaintiff was nonfuited at the Affiza for Default of the Warrant of the Justices to try the Cause, (viz.) for not consessing Leafe, Entry and Ouster, and prayed that the Nonsuit might not be Recorded, which the Court granted, and an Alias Distringan I Keb. 508. Pits and Viner. Cto, Car. 201 Aquila Wicke's Cale.

If the Plaintiff makes Title upon a De mise made by Tho. Bill and Agnes his Wife and the Parties are at Issue, and the Record of Nisi prius was entred by the Clerk, that the faid Tho. Bill and Anne his Wife made the Demile, &c. so that the Record of Na prius differs from the Roll; this shall not be amended, for if the Record should be amended, the Jury should be attaint, in a much as they found a Leafe made by The Bill and Agnes his Wife; and peradventur this Lease will not prove a Lease by The Bill and Anne his Wife. I Rolls Abr. 202. Km and King.

Record of Nisi-prius, Variance from the Roll not amendable.

Rone and Bond. M. 19 Car. J.

Amendment.

Ejectione Firme of Lands in Com' Deva Verdict was given pro Quer', and it was mo red in Arrest of Judgment, because the !

ire fac' was Samuel Ham, and so the Distringas: ut in the nomina furatorum it was Daniel Ham, and he was Iworn by the Name of Daniel; and if this were amendable, was the Duestion. Roll; It is, because the Venire fac' well; and therefore, altho' the Process ening be ill, it shall be amended, for it is the Default of the Clerk in miswriting it, for the heriff writes the nomina Jurator' out of the Distringas, and it is Error in him to write Daniel for Samuel. And he cited the Lord Rutnd's Case, and Cedwell's Case, where the difference is taken between the Mistake in ne Venire fac', there it shall not be amended; ut otherwise it is where it is in the ensuing rocess; and of this Opinion was Justice ones at this Time; and the Court agreed to ake Examination of the Truth, if the right Ian was sworn or not, and then to dispute it shall be amended. And at another Day, laynard prayed that it might not be amend-, for it is clearly out of the Statute of I fac. for that provides if there be Error in e Venire fac', Hab. Corpora or Distringas, in e Sirname or Addition of Names; but here is in the Christian Name, and this is not mendable by the Statute of 8 H. 6. for first e Amendments there are Increasing, Interhing, Addition or Substraction of Record in etters, Titles, Parcels of Letters: But here not an Addition, Substraction, &c. but ere is no other Record but this Pannel, and e Jury being called by this Pannel, and Dael was called by this Pannel and Iworn by ; and so it is here the Act of the Court, ot of the Clerk. 27 H. 6. c. 5. it was ill at

the Common Law, where a Man is ill na. med in the Hab, Corpora, and well in the Ve. nire fac'; and in Baskervill's Case this Difference was taken, (viz.) where it was in the Sirname, and where it was other Christian Name; for a Man at the same Time may have two Sirnames, and he which is named by a Sirname in the Distringas or Pannel, may be the fame Person which is named and Sworn by the other Name in the Pannel, and for this it shall be tried by Examination, and amended accordingly: But it is not possible that he which had one Christian Name in the Pannel, should be the same Person which had another Christian Name in the Venire fac'. and Mic. 6 Car. in Attaint, the nomina Jura. torum was Alexandrus, and the Venire fac' Alexander; and it was often moved, and the Court would not amend it: And in s Rep. 42. it is faid that Palus shall not be amended for Paulus; principally because it is in the Christian Name. Berkley; here is one sworn, which is not the Act of the Clerk. Brampfton; this is not the Act of the Clerk to sware him, but of the Court. Croke; the Statute 21 Fuc. doth not Aid this. Fones; it feems it shall be amended. Berkley; for this, was the Statute 21 Fac. made. Roll; If the Venire fac' was mistaken, no Amendment might be before Statute 21 Fac. and the Court faid they would be advised; but they all agreed, that it may not be amended, but upon the Examination of the Party himself which was sworn, and if the Party dies, no Amendment may be Omnino, and because the Parry was not here,

here, they would not speak further; but they examined the Sheriff de bene esse, and one Point was, If the Clerk wrote the Pannel out of the Venire fac' or Distringas; but adjourned till the Party came to be examined. And after the Juror was sent for out of the County of Devon and examined, and it was found by Examination to be the same Party; for which the Plaintiff recovered. M. 15 Car.

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When to

CHAP. XIII.

No new Ejectment without paying Costs of a former. When to move, that the Lessor of the Plaintiff may give Security. Where the De. fendant (hall have Costs and Damages. How the Plaintiff may aid himself by Release of Damages. Where the Plaintiff to recover Damages, but not the Possession. Executor not to pay Costs. Lessor of the Plaintiff to pay Costs. Where Tenant in Possession liable to pay Costs or not. Feme to pay Costs on Death of her Husband. Infant Lessor to pay Costs of the Writ of Enquiry. The Entry. Writ of Error lies upon the Judgment before the Writ of Enquiry, and why. Writ of En. quiry, bow abated.

Title to Part. IN Ejectment for 100 Acres, if the Plain-I tiff hath no Title he shall pay Costs, not if he has a Title to any Part.

Upon Confession of Lease, Entry and Ouster, the Defendant ought to move then, move that the That the Lessor of the Plaintiff enter into Leffor of the Security to pay Costs, for perhaps he may Plaintiff shall be a Beggar; but the Court would not grant give Security. ir upon Motion four or five Days before the Trial.

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given

If Judgment be given for the Defendant in Nonew Eject. Ejectment, the Plaintiff shall not be admitted ment without paying to bring a new Ejectment without paying Costs of the Costs of the former; but when Judgment is former.

given against the Desendant, if he brings his Ejectment, the Plaintiff cannot stop his Proceedings till he pays the Costs of the sormer, because he has an Execution against him.

Costs paid by the Sollicitor or Attorney in Costs by Attorney or Sollicitor of the Lesson. lici or.

I Levinz 66.

When only one of the Defendants hath Judgment against the Plaintiff, there the Plaintiff shall not pay Costs; so that if the Plaintiff in Ejectment suspects his Cause, his surest Way is to declare against a Friend of his, and then if he finds the Costs likely to go against him, his Friend may suffer Judgment by Default, and that saves Costs.

When upon a Trial the Plaintiff becomes nonfuit, the Defendant must pay the Jury, which is after allowed him in Costs; for it's intended that he received a Benefit by this

Nonfuit.

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Costs to be allowed for not going on to Trial at the Assizes, upon Assidavit of the Matter brought to the Secondary, without

Motion in Court, by Mr. Winford.

In all Actions of Trespals, Assault, salse Imprisonment or Ejectment brought against several Desendants, if any of them be sound Not guilty, he shall have his Costs, per Stat. 8 & 9 W. 3. c. 10. Sect. 1.

The

The Jury are to find Cofts and Damages in Debt, Trespass, Ejectment, &c.

Regular.

Release of Damages.

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If the Plaintiff mistake his Declaration. the Defendant shall have Costs. The Plaintiff may relinquish his Damages where part of the Action fails, and take Judgment for the other. And so is the Rule; If part of the Things demanded in this Action are well demanded, and part of the Things demanded are not well demanded, and Verdict is given for the Plaintiff for the Whole, and entire Damages are given, the Plaintiff may release all the Damages in that which is not demanded, and pray Judgment for the Residue; and this shall aid Error if Judgment be given accordingly. As in Ejectione Firme of a Messuage, Cottage and Tenement, if it be found for the Plaintiff, and entire Damages given for the Whole, because Ejectione Firme does not lie of a Tenement, the Plaintiff may release all the Damages, because it is entire, and have Judgment for all the Land faving the Tenement; and this shall not be Erroneous. So in Ejectment of Land, and de libertate Piscarie, for libera Piscaria, which is not good, the Plaintiff may release all the Damages, and have Judgment for the Land only, altho' he cannot be faid properly to release Damages, as to the Piscary, where none were. Godb. pag. 354. No. 439. 1 Rolls Abr. 786. Clive and Vere. 1 Rells Abr. 784, 786. Retorick and Chappel.

Where

Where the Plaintiff shall recover Damages, but not the Poffeffien.

If a Man brings an Ejectment, and lays the Demife (suppose) I Dec. and he had then a Title, and the Defendant confesseth Lease, Entry and Ouster, and gives in Evidence a Title to himself, which commenced 1 7an. Here the Plaintiff shall recover his Damages from the 1 Dec. to the 1 Jan. but shall not recover the Possession, because it appears by the Verdict he had no Title to the Land the I Fan. Whitfeild's Case, & Anne B. R.)

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Ejectment was for Entry into a Messuage five Tenementum, and four Acres of Land to the same belonging. As to the Messuage sive tenementum, the Declaration is uncertain, and if the Damages are released, the Costs are Warranty. gone alfo. It is uncertain to which the four Acres belong, i. e. to the Messuage or Tenement. But per Cur. as to the four Acres it's certain enough, and the Words (to the same belonging) are meerly void. 3 Leon. p. 228. Wood and Pain.

In Ejectment, Judgment is against the De- Executor not fendant who dies, and his Executor brings a to pay Costs. Writ of Error and is nonfuited. He shall not pay Costs; an Executor is not within the Statute for paying of Costs, Occasione dilationis. Mod. Rep. 77.

In Ejectment against Two, A. B. they prayed to be made Defendants, and were fo, confessing Leafe, Entry and Ouster, and at the Trial A, confessed so much as was in his Possession S 4

Possession for certain; but B. would not proceed with him, and the Plaintiff was nonfuit against both. He that tried it prayed Costs. which the Court granted, but they must join in the Suit of Execution for Costs. 2 Keb. 219. Sir Cyril Wych's Cafe.

Femeliable to Baron's Death.

The Lessor of the Plaintiff in Ejectment pay Costs on shall be liable to Costs, the Lease being made by Baron and Feme; on his Death she is liable as well as other Jointenant surviving. I Keb. 827. Morgan and Stapel's Cafe.

The Leffor of the Plaintiff where to pay Coffs.

The Lessor of the Plaintiff by several Rules of Court, on Demand, ought to pay Costs upon the Infufficiency, or Skulking of the

Plaintiff in Ejectment. 1 Keb. 17.

Tenart in ble to pay Costs by the Law.

The Lessor of the Plaintiff is liable to pay Costs (tho' he shall never be forced to give Security for them); but the Lessor of a Tenant in Possession is not liable to Costs, because tho' he may come in gratis and defend his Title, yet the Tenant in Possession is Possession lia- only liable to pay Costs by the Law. But only by the Course of the Court, unless the Trial be by the Leffor's Means brought to the Bar, and then he shall never have a second Trial at Bar before he hath paid the Costs of the former Trial; yet the Court, for Nonpayment of Costs, will not hinder Proceedings in the Country. Per Cur. 1 Keb 106. Latham's Cafe.

In Indgment against his own Ej-Stor, no Coil to be paid by the Tenent in Post fion.

Note, Upon a Judgment against his own Ejector, in Default of confessing Leafe, Entry and Outer, according to Rule of Court, without Special Rule no Colts shall be paid by H. the Tenant in Possession that made the Default, &c. Contra, upon Trial had against H.

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because the Plaintiff hath the Benefit of the Suit, viz. Judgment against his own Ejector, whereby he may recover the Possession.

1 Keb. 242.

Verdict was for the Defendant, and the Allegation by Plaintiff to fave his Costs alledged, That the the Plaintiff Venue was misawarded, and that there was a to save his Costs, not al-Fault in the Declaration; but refolved per lowed. Cur' the Defendant shall have his Costs. 2 Rolls Rep. 327. Pritchard and Reynell. Palmer 365.

nesme Case.

The Plaintiff in Ejectment was nonsuited. The Plaintiff which was recorded, and the Defendant fued not to take Advantage of or Costs upon the Stat. 4 Fac. c. 3. The his own in-Plaintiff alledgeth Insufficiency in his own De- sufficient Declaration to avoid Costs upon the Words of claration. he Stat. That in Ejectione Firme and every ther Astion where the Plaintiff might recover Cofts, &c. If it had been found for him, that hen upon Nonsuit, &c. in every such Action he Defendant shall have Judgment to recover Costs against him; and the Plaintiff pretends n such Action he cannot recover where the Declaration is not sufficient. But per Cur', here is no Reason the Plaintiff should take Advantage of his infufficient Declaration. Palmer's Rep. 147. Dove and Knapp.

Debt was brought on the Stat. of 8 Eliz, Costs on Stat. or Costs in an Ejectione Firme, the Plaintiff 8 Eliz. on wing nonsuited, supposing the Statute to be the State mishade ad Parliamentum tentum 8 Eliz. where-taken. s the Parliament began Anno quinto, and by Prorogation was held in 8 Eliz. fo it ought o have been ad Sessionem Parliamenti tent' Ano Octavo Eliz. and ruled to be ill. Cro. Fac.

11. Ford and Hunter.

The Law of Ejectnienes.

Costs for Want of Conrinuances entred.

When Nonfuit shall be for Want of a Declaration.

If no Continuance be entred, then a Difcontinuance may be entred, and he may reco ver Costs in Ejectment. 2 Bulftr. 62.

Per Stat. 12 Car. 2. c. 11. Nonsuit shall be for Want of a Declaration before the End of the next Term after Appearance, and Judg. ment and Costs against the Plaintiff. Stat.

13 Car. 2. c. 11.

In all personal Actions, and in Ejection Firme for Lands, &c. depending by Original Writ, after any Issue therein joined, and also after any Judgment had or obtained, there shall not need to be Fifteen Days between the Teste-day and Day of Return of any Write Venire fac', Habeas Corpus, Jurat' Distringe Furat, Fieri fac' or Cap' ad Sat', and the Wit of Fifteen Days between the Teste-day and the Day of Return of any fuch Writ shall my be affigned for Error. Stat. 12 Car. 2. c. II.

Infant Lessor in Ejectment shall pay Coll

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3 Keb. 347. Maften and King.

Upon a Verdict against all Evidence to Court will tax Costs, and will not suspend

till a new Trial. 1 Keb. 294. If the Defendant, whose Title is concern in an Ejectione Firme, will not defend his Th to the Lands in Question, and the Verdide pals against the Plaintiff, the Ejector may

leafe the Damages. Pr. Reg. 100.

Note, This Rule, as to paying of Costs, a Man had a Verdict in Ejeament, and Co taxed, and an Attachment for not pays them; and whereas he cannot procure the of him who ought to pay them, he fues same Party for the same Thing again in a ther Court, and he shews this by Mon

There need not be 15 Days between the Teste-day and Day of Return.

Infant Lessor pays Costs.

Anston

The fole Remedy for Costs in the first Trial is by Attachment, unless the fecond Trial be in the fame Court after a Verdict.

and prays he may not proceed till Costs paid: vet the Court will not grant it, but he ought to refort to the Remedy of the Process of the Court where he recovered for these Costs; and so it is if it was in the same Court for Costs for not going on to Trial; but if it were for Costs after a Verdict in the same Court, there, upon Affidavit of this, it's good Cause to flay the second Trial for the same Thing, unless the Costs of the First be paid. Sid. p.229. Austin and Hood.

Upon a Trial at Bar in Ejectment where Where Costs Two were made Defendants, and had entred are confessed into the Common Rule; and at the Trial on Leafe, Enone appeared and confessed Lease, Entry and ster, or and Ouster, but the other did not; and after Evi- that the other dence given, the Plaintiff was nonfuited, and did not. Costs taxed for the Defendants. Per Cur', both these Defendants are intitled to the Costs, and

he that did not appear, might release them to the Plaintiff. But the Court said, If there should appear to be Covin between the Leffor of the Plaintiff and the Defendant, who did appear to release the Costs, they would correct fuch Practice when it should be made to appear. 2 Ventr. 2 W. & M. Fagge and

Roberts.

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Berkley had Judgment in Ejectione Firme in C. B. and Execution of his Damages and Costs. Foot brings Error, and the Judgment is affirmed; whereupon B. prays his Costs for Delay and Charges, but could not have them, for no Cotts were in fuch Case at Common Law. And Stat. 3 H. 7. c. 10. gives them only where Error is brought in Delay of Execution; and here tho' he had not Execution

of the Term, yet he had it of his Cost.

1 Ventr. 124.

Administrator brought a Writ of Error upon a Judgment given in Ejectment against the Intestate. Per Cur', he shall pay no Costs, tho' the Judgment was affirmed, and the Writ brought in Dilatione executionis. I Ventr.

Writ of Inquiry.

The Entry.

It was affigned for Error, That a Writ of Enquiry of Damages was awarded, and no Day given to any of the Parties to be there at the Time of the Return; for the Entry ought to be, Ideo dies datus partibus prædiction, or at least to the Plaintiff, that so he might then pray his Judgment, sed non allocat, for the Desendant is not to have Day, and the Plaintiff is to attend at his Peril; and so is the Course of the Common-Pleas; aliter in the King's-Bench. Cro. El. p. 144. Mathew and Hassel.

E. in Ejectione Firme had Judgment by Default against the Desendant; whereupon a Writ of Enquiry issues out to enquire of the Damages, and before the Return thereof the Desendant brought a Writ of Error; the Question was, Whether the Writ of Error were well brought, in regard the Course of the Common-Pleas is not to make up the Judgment, until the Writ of Enquiry be returned. Roll said, A Writ of Error may be brought before the Writ of Enquiry be returned in Ejectione Firme, for in that Action the Judgment is compleat at the Common Law before it be

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returned; for the Judgment is but to gain Possession, and so it is in a Writ of Dower. But in an Action of Trespass, where Damages are only to be recovered, there the Judgment is not perfect, till the Writ of Enquiry be returned, nor can be made up, as in this Cafe it may. But in regard that here is no compleat Judgment, for there is no Capias, which bught to be in all Actions Quare Vi & Armis, hat the King may have his Fine, which elfe he cannot have, if the Party do not proceed in his Writ of Enquiry, the Writ of Error is brought too foon, and you may proceed to Execution in the Common-Pleas, for the combleat Record is not here. Afterwards, in another Case, Rolls was of Opinion, That it was a perfect Judgment; and it is in your Power (said he to the Desendant's Council) whether you will have a Writ of Enquiry or not; and if the Judgment be affirmed here pon the Writ of Error brought, you may ave a Writ of Enquiry in B. R. the Council herefore moved for a Certiorari. Rolls; take , but it will do you no Good, for the Judgnent is well. Stiles Rep. Glide and Dudenu's Case, p. 122. Crook and Sanny. Stiles 127.

This Point is fettled now in both Courts. The Writ of n Ejectione Firme, if the Plaintiff recover by Error lies up-Wibil dicit, in which Judgment is given, that on the Judgment before he Plaintiff Mall recover his Term, and a the Return of Vrit is awarded to enquire of Damages, a the Writ of Vrit of Error lies upon this Judgment before Enquiry, and he Return of the Writ of Enquiry of Dama. why. es, and Judgment upon it, for the Judgment perfect as to the Recovery of the Term bepre by the first Judgment, and the Plaintiff

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may prefently have Execution for the Posses fion; and peradventure he never will have Judgment for the Damages, and so the Defen dant shall be ousted of his Possession fans Re medy. So it is if a Man recover in Ejedion Firme by Confession, or non sum Informatius or Demurrer, a Writ of Error lies before the Damages taxed by Writ of Enquiry. 1 Rd p. 750, 751. Newton and Terry, Taverner and Fawcet, Booth and Errington. 5 Rep. Wymani and House and Layton. Latch, p. 212.

Abstement by Death afor pendant Error, but not after Affirmance.

Council prayed Abatement of a Write Enquiry on 16 and 17 Car. 2. c. 8. by Aff ter Judgment davit of Cestuyque vie's Death after the Judg ment two Days; and by the Act from Judgment affirmed in Error, which was Term after, which the Court granted. But were better the mean Profits were recoverable in Ejectment by the same Verdict. Wild held this should be given in Evidence on the Wi of Enquiry, but being no Bar but in Mitig tion, that is not sufficient; and it was stay Warren and Orpwood, Mic. 25 Car. 2. B. 3 Keb. p. 218.

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CHAP. XIV.

Of Judgment in Ejectment and Execution. The Form of entring Judgments in this Action. How the Entry is when Part is for the Plaintiff, and Part against him. How against several Ejectors. The Form of the Entry in case of Death of the Plaintiff or Defendant. After Verdict and before Judgment the Plaintiff dies. Ejectment for the whole, and no Title but to a Moiety. For what Causes Judgments in Ejettment are arrestable or erroneous. In what Cases Judgment shall be amended. Of Judgment against ones own Ejector.

Note, Note Judgment in Ejectment till La-titat filed, and Bail. 2 Keb. 743.

The Form of entring Judgments in this Action.

In Cr. El. 144. Matthew and Haffel's Cafe. Quad recuperes t was affigned for Error, That the Judgment mini was, Quod recuperet possessionem termini præditi, where it should be, Quod recuperet terminum; or as in a Real Action he is to recover Seiin, so in a Personal he is to recover Possesion, and the Writ is Habere fac' Possessionem. Leon. p. 175. mesme Case.

All the Course of Entries, when Part is How the Enound for the Plaintiff, and Part against him, try is when ound for the Plaintin, and Def. eat inde fine die pro Quer', and quoad, Part against.

quoad, &c. whereof he is acquitted. It was Taylor and Woldboro's Cafe. Cr. El. 768. Er. ror of a Judgment in Ejectment was brought, because the Desendant was found Not guilty quoad a Third Part; and the Judgment is entred thereupon, Quod Def. eat inde sine die equer' in misericordia, &c. whereas it ought to have been, Quod le Plaintiff nil capiat per Billam for that Third Part, sed non allocatur cause qua supra, Cro. El. 768. and the Court would have affirmed the Judgment, but because the Plaintiff had not appeared that Term, they caused him to be nonsuited.

Cause the Judgment in Ejectione Firme in Wales was, Quod Def. sit quietus, such Judgment being only given in a Writ of Right, and such

Actions which are final; but this Action is not final, and the Judgment should be, Quantum Def. eat inde sine die. Sir William Morris and

In I Rolls Rep. 51. Error was affigned, be

Cadwallader's Cafe.

In Ejectione Firme, if upon Non sum informatus pleaded, Judgment be given, Quod Des remaneat indefensus, without saying versus Que rent', yet it's good. I Rolls Abr. 772. Fuga

and Mallory.

Ejectment was against several Desendant &c. they were fined severally, where the Ejectment was against them all jointly; but because they were found several Ejectors of several Parcels, the Judgment was good (fall cet) quilibet capiatur quoad his Parcel; and is had not been joint, it had not been sufficient Bendl. 82. Darcy and Mason.

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Qued Def. sit quietus.

Quod Def. remaneat indefens'.

Against feveral Ejectors.

The Plaintiff shall be in Misericordia but The Plaintiff once. As Ejectment with Force, Three of shall be in the Defendants were found guilty of the Misericordia but once. House and Ten Acres of Land, and Not guilty for the Residue. The fourth Defendant is found Not guilty general; and Judgment was enter'd, That he should recover his Term in the House and Ten Acres of Land, and Costs against the Three Defendants, and that the faid Three Defendants capiantur, and that they be acquitted quoad residuum, and that the Plaintiff quoad the Three Defendants pro falso clamore, for so much as they were acquitted; & pro falso cla. more against the fourth Defendant, sit in Mifericordia. It's good enough, and the Course, that the Plaintiff in such Cases be in Misericordia but once, which is specially enter'd. Cro. Car. 178. Dockrow's Cafe.

In Croke and Sam's Case, Stiles 122. 346. the Judgment was, Ideo considerat' est qd' recuperet, and there wants, & Def' capiatur, it is

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Form of the Entry in case of the Death of the Plaintiff or Defendant.

Note, That Three Plaintiffs in Ejectment One of the were, and on general Issue it was found for Plaintiffs died the Plaintiffs. And Four Days after the during a Cu-Verdict given, was moved to stay Judgment ria advisare. a special Matter in Law, whereof the Juttices were not resolved, and gave Day over, and in the mean Time one of the Plaintiffs died. This shall not stay Judgment, for the Postea came in 15 Pasch. which was the 16th

of April, at which Day the Court ought to give Judgment presently. But Cur' Advifare welt', and on the 19th of April one of the Plaintiffs died, and the Favour of the Court shall not prejudice, for the Judgment shall have relation to the 16th Day of April, at which Time he was alive. 1 Leon, 187. Mey's Cafe.

The Death of one Defenabate the Weit

In Ejectment, Two Defendants were found guilty, and the other not. The one that dant hall not is not guilty dies, the Plaintiff shall have Judgment against the other. So it is, if he that is dead had been guilty, because this Writ is but as a Trespals, where the Death of one Defendant shall not abate the Writ. Moor 469. 673. Griffith and Lawrence's Cafe.

Enelliana 2ezink Barra and Feme. Baron dies.

Ejectione Firme against Baron and Feme: and Verdict pro Quer', and after, between the Verdict and Day in Banco, the Baron dies. And therefore the Court in Lee and Rowley's Cafe, I Roll. Rep. 14. advised the Plaintiff to relinquish this Action, and only to enter the Verdict for Evidence; for if Judgment is given against the Defendant, and one is dead at the Time of the Judgment, then this will be erroneous, per Dodderidge and Mann But Coke faid, The Plaintiff Preignatory. may make Allegation that the Husband is dead, and shall have Judgment against the And it hath been adjudged lately, Ejectment against Baron and Feme, which are but one Person in Law; yet if the Husband dies, the Suit shall proceed against the Wife, Hardr. 61. But in Rigley and Lei's Case, Cr. Jac. 356. Ejectment against Baron and

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W W and Feme, after Verdict Baron dies before the Day in Banco, because it is in the Nature of a Trespass, and the Feme is charged for her own Fact. Per Cur', The Action continues against the Wise, and Judgment shall be enter'd against her self, because the Baron was dead.

Ejectment against divers, all plead Not Record where guilty; and divers Continuances were be not to be tween them all, where revera one of the amended. Desendants was dead after Issue joined, and a Verdict was after sound pro Quer', and the Record was moved to be amended. Per Cur', we cannot do it. After Verdict and before Judgment the Plaintiss may surmise that the Desendant was dead before the Ver- One Desendict, and Continuance was against him as dant dies after in sull Life. Jones 410. Sir John Fitzherbert Issue joined. versus Leech. And,

In Ejectment to try the Custom of Copy-Suggestion hold, the Plaintiff was nonsuit, and one of enter'd on the the Desendants being dead, Hales, Chief Ju-Roll, one Destice, advised to enter a Suggestion on the fendant being Roll that one was dead, else the Judgment Nonsuit. for the Desendants on the Nonsuit will be er-

roneous as to all. Mich. 23 Car. 2. B. R. Haw-thorn and Bawdan.

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Ejectment was brought against Seven, Ejectment a-One dies, hanging the Writ, and the Judg-gainst Seven, ment was given against the Six, without and one dies speaking any Thing of the Seventh, where hanging the the Judgment ought to be against them that were in Life, and a Nil cap' as to him that was dead; otherwise there is a Variance between the Writ and Judgment: And a Writ of Error was brought, but it was not

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well brought, for the Seventh joined in the Writ of Error, which was ad grave damnum of all the Seven. But had it been omitted ad grave damnum of him that was dead, it had been good. 2 Rolls Rep. 20. Bethell and Parry,

Pal. 152. Mesme Case.

Afrer Verdict and before Judgment the Plaintiff dies, and Judgment is given for him the fame Term.

In Hide and Markham's Case it was ruled. That if one bring Ejectione Firme in B. R. and there had a Verdict in a Trial at Bar; and after, before Judgment, he dies, and after the Judgment is given for him the same Term: This is not Error, for that the Judgment shall relate to the Verdict. But if the Verdict pass against the Plaintiff at the Nisi prius, and after, before the Day in Banco, he dies, and after Judgment is against him: This is Error, for as much as Judgment is given I Rolls Abr. 768. and against a dead Man. Furdan's Case, Ibid.

The Plaintiff dict, and Judgment was not stayed, and why.

The Plaintiff in Ejectment dies, Addison's dies after Ver- Cafe, Mod. Rep. 252. Yet as that Cafe was, the Court would not fray Judgment; for between the Lessor of the Plaintiff and the Defendant there was another Cause depending, and tried at the same Affizes when this Issue was tried, and by Agreement between the Parties, the Verdict in that Case was drawn up, but agreed it should ensue the Determination of this Verdict, and the Title go accordingly: Now the Submission to this Rule was an implicit Agreement, not to take Advantage of fuch Occurrences as the Death of the Plaintiff, whom we know no Ways to be concerned in Point of Interest, and many Times but an imaginary Perlon. (Per Cur', We take no Notice judicially, that

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the Lessor of the Plaintiss is the Party inte-What Notice rested, and therefore we punish the Plaintiss the Court is he release the Action, or release the Da-Lessor the mages.) It was said too in Behalf of the Plaintiss. Judgment, That there was a Man of the same Name in the County with him that was made Plaintiss: And by the Court that is sufficient, and the Court shall intend it to be him, were there any one of the same Name in rerum natura.

It is said in Cooper and Franklin's Case, If Ejectment for one brings Ejectione Firme for the whole, has the whole, and ving Title but to a Moiety, that it hath been a Title but to adjudged against Bracebridge's Case, in Plond. a Moiety, he shall have Judgment for a Moiety. 3 Bul. shall be for strode 185.

In what Cases, and for what Causes, Judgments in Ejectment are arrestable or erroneous.

In Savern and Smith's Case, Judgment Judgment for was de integris tenementis, where it ought to the whole have been for a Moiety: The Judgment where it ought to be was given for the whole, and intire Dafor a Moiety. mages affested by the Jury. It is Error. Cro. Car. 7.

the counts.

The Declaration was, 2d' per Indentur' dimisit decimas garbar' Rectorie de, &c. una cum
quodam horreo & gardino eidem Rectorie pertin'.

And the Judgment on Demurrer on the
Plea was, Ideo, &c. qd' præd' Querens recuperet vers' præsat' Dest' terminum suum prædict'
adhuc ventur' de & in Rectoria horreo & gardino prædict' cum pertin' & damna sua. And More Damamore Damages is sound in the Return of the ges sound
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Inquisition than the Plaintiss counts. And

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the intire Rectory was not let, and no Term Supposed in it in the Declaration, but in the faid Three Particulars, and no express Judgment is given, for the Tythes and Da. mages are affessed for the Expulsion of the intire Parsonage, of which there was no Complaint. It feems it is erroneous. 258. Plow. 19. 1 Bulftrode 49. 10 Rep. 117. 2 Cro. 544.

Against Guardian and Infant qd' capiantur.

Ejectione Firme was brought against Four. whereof One was an Infant, and appeared by his Guardian, and Verdict was pro Quer', and Judgment against them quod capiantur. But no fuch Judgment ought to be against an Infant, and it is Error, and Judgment was reversed. Cr. Fac. 274. Holbrook and Doylis Cafe.

Infant appeared by Attorney.

C. one of the Defendants at the Time of the Judgment was within Age, and appeared by Attorney, where it ought to have been by his Guardian, the Judgment being upon Verdict. Per Cur', it's Error; and in regard Damages and Costs are intire, the Judgment shall be reversed for both. By the Statute 21 Fac. 13. Judgment shall not be arrested, for that the Plaintiff in any Ejectione Firme, or in any personal Action, being under Age did appear by Attorney, and the Verdict did pass for him.

Not fevering, mages.

Judgment was reversed in Error of a Judg and intire Da- ment in C. B. in not fevering for what Part by Number of Acres by special Verdia and giving intire Damages to the Plaintill 2 Keb. 250. Mackworth and Thomasin.

Note, If it appear by the Record of a special Verdict that the Plaintiff had Priority of Possession, and no Title was found for the Defendant, the Plaintiff shall have Judgment. 2 Sanders II2.

Ejectione Firme was against Baron and Feme: Verfus Baron On Not guilty pleaded, the Feme was found and Feme guilty, and the Baron not guilty; and the qued capiantur, Judgment was against Baron and Feme quod the the Baron be found not capiantur. This was affigned for Error; but guilty. the Plaintiff had Judgment, for so are all the Precedents: But in the Writ it was Vi & armis, Vi & armis and in the Declaration Vi & armis was lest lest out in the out, and for this Cause Judgment was reversed. Declaration.

Cro. Car. 406. Mayo's Cafe.

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Note

In Ejectione Firme, if Judgment be given Writ of En-upon Demurrer, or by Default, or on Non quiry of Da-Sum informat', for the Plaintiff to recover the mages, with-Term, but it's awarded that there shall be a out faying Quod capiasur. Writ of Enquiry of Damages, without faying Quod capiatur; this is erroneous, for it may be he will never enquire of the Damages, and make Return of it; and then the Fine due upon the Capiatur will be lost. Abr. 769.

Note, On Not guilty pleaded, Issue is join'd, and a special Verdict found, and upon this Verdict Judgment given against the Plaintiff, and after the Plaintiff brings a Writ of Error, Plaintiff and in this the Judgment is reverfed, the brings a Writ Plaintiff shall have Judgment to recover his of Error, and Term, his Declaration being good, and the the Judgment is reverted: Law being for him on the special Verdict: What Judg-For the Court which reverfeth the first Judg- ment he thall ment, ought to give the same Judgment which have. was given in the first Suit. 1 Rolls Abr. 774. T 4 Note Omalcowr and Eyres,

Before Judgment the Leafe expires, the Plaintiff shall have Judgment for Savile 28 Damages.

Note also, If before Judgment the Years of the Leafe expire, the Plaintiff had Judgment to recover Damages; otherwise in Actions where Freehold is to be recovered.

In what Cases Judgments shall be amended.

Twenty Acres enter'd for Ten Acres.

12 01

TEN:

The Jury find the Defendant guilty of Ten Acres, and the Judgment was entered of Twenty Acres; the Judgment was amended.

Winch, p. 8.

If on Non culp' pleaded, a Verdict is for the Plaintiff, and Costs and Damages given; and upon this the Judgment is Quod quer' recuperet the Damages and Costs, and not Quod recuperet terminum, as the Use is: This is the Default of the Clerk, and so amendable. I Rolls Abr. 206. Belfh and Pate.

Quod recuperet terminum left out.

Variance of Parcels.

The Clerk of the Entries of the Judgments had mistaken the Parcels, the Jury having found several Ejectments in several Parcels; they find S. had ejected him out of certain Parcels by a certain Name, and T. had ejected him out of other Parcels by a certain Name, and mistook that S. had ejected him. out of the Parcels that T. had ejected him, having the Distringas for his Direction. was amended, for the Entry was, Quod recuperet versus S. unum Messuagium, &c. which was the Ejectment made by T. and so vice versa, whereas the Court's Judgment was, Quod Judicium intretur pro Quer'.

Amendment.

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In Ejectione Firme of One Messuage, Two Cottages, and certain Lands, and the Jury nd the Defendant guilty of the Moiety of a deffuage and Lands, and not guilty of the Two Cottages, and of the other Moiety of he Messuage and Lands, and Judgment is, Juod quer' recuperet Terminum (uum prædict' de redietate tenementorum prædictorum, & eat inde ne die for the Residue: And this Judgment, alhough it may be intended that Judgment is iven for the Moiety of the Two Cottages, hereof he is found Not guilty, in as much it is tenementorum predictorum; yet it shall Default of eamended, it being only the Default of the the Clerk. lerk, having the Postea before him when e enter'd the Judgment. I Rolls Abr. 206. awyer and Hoskins.

Judgment quod recuperet, and faith not ter-

inum, yet amended. 1 Keb. 155.

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The Judgment was, Quod recuperet the Pof- Amendment fion of a Messuage, Sixty Acres of Land, for Misprission ity Acres of Meadow, and Fifteen Acres of the Clerk. Pasture; whereas the Verdict was enter'd. hat he was found guilty of the Ejectment a Messuage, Ten Acres of Meadow, and hirteen Acres of Pasture, and for the Resite Not guilty; fo as there is not any Land the Verdict, and a leffer Quantity of Meaow and Pasture than is in the Judgment. Per miam, it is amendable, and is not like the ntry of a Capiatur for a Misericordia, which not amendable, that being an Error in pint of Law, and cannot be imputed to the efault of the Clerk. But here the Verdict the Guide to the Judgment; and when the

Verdict is before the Clerk to enter up the Judgment, it is but his Misprission, especially the Entry of the Judgment in the Paper Book being right according to the Verdict. Cr. Fac. 632. Mason and Stephenson.

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EXECUTION.

Two Defendants, one confesseth, the other pleads Not guilty.

In Ejectment against two, one confesseth, the other pleads Not guilty, and at the Trial the Plaintiff is nonfuited, he cannot take Exe. cution against him that confesseth; but if by Rule of Court one be made Defendant for Part, and confess, the Plaintiff notwithstanding the Nonsuit may take Judgment against him that confesseth for his Part: But if each Defendant take upon him the whole Title, the Plaintiff in any Case cannot have Execution; but one Defendant being Lessor of the House, reserving a Chamber, who never had any Notice of the Action, and therefore Judgment enter'd of the whole House, is not void quoad the Chamber only, but wholly. Hide would have had the Attorney, who enter'd Judgment, pay Costs, but ordered the Possession to be delivered to the Tenant on Agreement to relinquish the Costs. 1 Keb. 786. Burgoigne and Thomas.

It was a Question much debated, If a Son Scire fac' upon Judgment in fac quare Executionem habere non debeat, upol a Judgment in Ejectione Firme, may be brough Ejectment may be by the Administrator of the Lessee (the Plain brought by tiff in Ejectment, or by the Lessor himself the Adminiagainst the free Tenants? And per Cur', the strator of the Leffee or Lef- Leffee or his Administrator, as well as the Lella for himself.

Lessor himself, shall have this Writ in such a Case; this was on Demurrer to the Scire fac': Yet the Lessee nor his Administrator shall have it, but the Lessor himself. Sid. 217. Cole and Skinner.

Note, Baron and Feme are ejected out of Recovery by a Term in the Right of the Wife, and the the Husband Husband recovers in Ejectione Firme brought in Ejectione of the Wife's by him in his own Name; this is an Altera Term. tion of the Term, and velts it in him only.

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Note, It was adjudged in Throgmorton and After Judg-Sir Moyle Finch's Case, That after Judgment ment Court of for the Mortgagee in Ejectment, a Court of Equity not to Equity cannot relieve the Mortgagor; but he relieve the Mortgagor. ought to have preferred his Bill before Judgment, 3 Bulftr. 118. The Case was, He, by whom the Money was fent to be paid for the Redemption of the Land, was by the Way robbed of the Money; but the Money was paid prefently after.

Note also, In Ejectione Firme, if a Rule is No Judgment given to the Defendant to answer, and he upon Nihil didoth not, and upon this another Rule is given kotion in to answer peremptorily, and he fails to do it, Court. no Judgment shall be enter'd against him on a Nibil dicit, but upon Motion in Court.

It is faid in Carter and Claypool's Case, I Rolls Abr. 887. If a Man recover in Ejectione Firme against J. S. who after dies, he must sue Execution against his Heir; for by Intendment 7. S. his Ancestor, the Ejector, was a Dilleilor.

nant appears.

Of Judgment against one's own Ejector.

Judgment against the casual Ejector, Council prayed that he might not plead to the De. claration of Michaelmas Term on Lease of the Bishop of Worcester made this January, Habend from the 20th of Ociober last, which is ill per Declaration is Cur', and Judgment stayed. But this is a good of that Term Declaration of this Term by new Delivery, when the Te- though of Course a Declaration is of that Term always when the Tenant appears, which was but this Term, yet Judgment stayed. 3 Keb. 729. Hill. 18 Car. 2. Finch and

Pley.

A Trick to gain Posses-

fion.

The Action was of Easter Term, and the Demise and Title of the Plaintiff is but Two Day before Trinity Term, and there was a Rule for Judgment against the casual Ejector. Per Cur', This is but a Trick to gain Possesfion, as Sir Richard Mincham's Cafe was, who delivered Ejectments in his Wife's Life-time on Leafe then when he had Title, as of subsequent Term when she was dead; and it is not fit to put the Tenant to a Writ of Error: So the Rule was fet aside, and order'd a new Declaration. 3 Keb. 343. Trin. 26 Car. 2. Stedman's Cafe.

When Judgment against ones own Eje-Stor to be enter'd.

Judgment against one's own Ejector cannot be enter'd till the Postea returned and indorsed, that the Nonsuit was for want of confeffing Leafe, Entry, and Ouster, which the Secondaries agreed for a Rule. 1 Keb. 246. Sir Hugh Middleton's Cafe.

Note.

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Note, After the common Rules are out in Motion for a electment, you must move for a peremptory peremptory And in Day. Day before you can have Judgment. London and Middlefex the Court usually orders o plead the next Day, or else Judgment; but in other Countries, till Four Days after

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Judgment in Ejectment against the casual Death of the Ejector set aside, because the Tenant in Pos- Tenant befession, who received the Declaration, died fore the before the Term wherein he ought to have appeared, and no Costs allowed, quia est actus Dei. It was objected by Serjeant Tremaine, That where the Landlord and Tenant for Years were admitted Defendants in Ejectment. the Landlord died, yet Judgment was obtained against the Tenant. But the Court took a great Difference; for in the first Case the Tenant dying, there is no Body to defend, but in the last Case the Tenant was ad-

mitted to defend. Judgments in Ejectment against casual Eje. Judgment ctors for want of an Appearance shall be set against casual aside, and Restitution granted if no Latitat good is hath been sued out against, nor common Bail mon Bail be filed for such casual Ejector or nominal De- not filed in fendant within Fourteen Days after fuch Ap. Fourteen Days pearance. Trin. 4 Will, & Mary, per Cur'.

after Appea-

Council prayed Judgment against his own Judgment Ejector in an Action for Lands in the County against one's Palatine of Chefter, which the Court granted; own Ejector because when the Desendant hath pleaded to for Lands in Issue, they may try it by Mittimus in the Com' Chefter. County Palatine. 2 Keb. 135. Reddish against Smith.

In

The Law of Ejeaments.

In Ejectment, Verdict was pro Quer' in B. R. and a Writ of Error was brought in the House of Peers. It was moved, whether a Capiatur shall be awarded against the Defendant, which is usually done, ex Officio, for a Fine to the King for a Breach of the Peace. But now by Statute 5 & 6 Will. no Cap' pro Fine shall be prosecuted against the Defendant, either in Trespass, Ejectment, Assault, or false Imprisonment, in Lieu whereof the Plaintiff is to pay the proper Officer, upon figning the Judgment, 6 s. 8 d. over and above the usual Fees. So that now it will be Error to have a Capias awarded, fince the Act prohibits the Execution by remit ting the Fine. And the Court was of Opi. nion, that the Capias should be wholly omitted. 5 Mod. 285. Lyndsey and Sir Thomas Cook.

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CHAP. XV.

Habere facias Possessionem.

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1 Keb. 579.

How this Writ is to be executed: And when, and in what Cases a new Habere facias Possessionem shall be granted or not. How the Sheriff is to deliver Possession. Habere facias Possessionem after the Year without Scire fac', and why. A Tenant readmitted upon his attorning Tenant.

THIS Writ is made out by the Clerk of By whom I the Judgments after Costs taxed and the made our. udgment figned.

In Ejectione Firme of 20 Acres of Land, Plaintiffat he Defendant on Not guilty pleaded is found his own Peril Residue. Now the Plaintiff at his own Peril, the Acres pon his own shewing which they are, shall found. be put in Possession. Savil, p. 28.

And if a Man bring Ejectione Firme of 40 Acres of Land, and recovers 30, and not he Residue: Upon the Writ of Execution How the Shehe Sheriff may deliver to him any, (viz.) riff must de-Three or more of the Acres in the Name of liver it. he whole, without fetting out the Land, covered by Metes and Bounds; though the Plaintiff had not recovered all the Acres. thereof he brought the Action, and wherehe had supposed the Desendant Tenant. Rolls Abr. 886.

How the Sheriff may justify the removing of the Goods out of Possession upon a Win of Habere facias Possissionem. Lut. 1486.

The Tenant readmitted ing Tenant.

Judgment was obtained in Ejectment by Default, and a Writ of Possession executed upon his turn- and the Tenant and all his Family turned out of Possession, and the Tenant was immediate ly readmitted upon his atturning Tenant, Al terwards another Person serves the Tenan with a Declaration in Ejectment, and the Tenant atturns to him; and the first Man who recovered, fued out a Writ of Posses fion upon his Judgment, and executed it but it was fet aside, because the Plaintiff had upon his first Execution the Effect of his Judgment, and might have kept the Posses fion when it was delivered to him by the She riff. 5 W. O M.)

How the Sheriff is to efteem the Acres.

Where Delivery of one Mefluage in Name of all is fufficient or not.

Now if a Writ of Execution go to the Sheriff to put a Man in Possession of 20 Acre of Land, the Sheriff ought to give him a Acres in Quantity, according to the Ulag of the Country, and not according to the Usage of the Statute. And if a Man recover divers Messuages, the Sheriff (upon the Wi of Execution) may make Execution of on by the Sheriff in the Name of all, without going to ever one in particular; but if in such Case the Messuages be in the Possession of seven Men, he ought to go to every House pa ticularly, and of them to deliver Seisin, and the Delivery of Seisin of one in the Nam of all is not sufficient. Floid and Bet bel.

When many Acres are in Demand, and but Part recovered, and the Habere fac' Po seffionem comes to the Sheriff to deliver Ex

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cution of the Land recovered, it does not fuffice there to give one Acre in the Name of the whole recovered; but he ought to Where the fet forth all the Acres particularly, so that Sher ff is ro the Recoveror may have Benefit of the Judg- give all the ment in Certainty, and the feveral Profits Acres in parwithout Interruption. Pal. Rep. 289. Molineux and Fulyam.

Sometime a Rule of Court is to give Possession.

If one recover Rent or Common, a Writ How the Sheissues out to the Sheriff to put him in Pos. riff is to give fession, and the Sheriff comes upon the Pottession of Land, and delivers him Seisin of the Rent Rent or Comor Common by Parol, this is well done. 22 Aff. 84.

Habere facias Possessionem, if executed, is Habere facias good without Return. But the Court may Possessionem command the Sheriff to return it. I Rolls good without Rep. 77.

Note, The Sheriff, in Cases where Land is How Post-frecovered, is to put the Party in Possession sion to be giand Seisin by a Twig, Clod, &c. of an ven of House, House, by the Key, &c. of Rent, by Corn or Land, or Grass growing on the Land, out of which the Rent issues. 6 Rep. 52.

Error was of a Judgment in the King's-Bench in Ireland, and Judgment for the Defendant was reversed, and Judgment given for the Plaintiff, Quod recuperet terminum suum predict'. It was moved how Habere fac' Possessionem should be awarded; and it was resolved, Habere facia, That there should be a Writ directed to the Post Stonem. Chief Justice in Ireland to reverse that Judg- how awarded

ment, into Ireland.

The Law of Ejenments.

ment, commanding him to award Execution. Cro. Car. 511. Mulcarry and Eyres.

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In what Cases a new Habere facias Possessio. nem shall be granted or not, and of the Sheriffs Demeanor therein.

Where the have a new Habere facias Poffeffionem.

Nota pro Regula, That after Habere facias Plaintiff shall Possessionem executed, be it by the Sheriff, or voluntary Delivery of Possession, if the Party be turned out again by the Defendant's Means, he may have a new Habere facias Posseffionem on Motion in Court, and an Attachment against him: But if after quiet Possession others enter, he must have a new Action or Restitution, else by this Means, by Practice the Plaintiff may turn out any of his After-Lesses on Non-payment of Rent. Had actual Possession been by Agreement of the Parties, or by Delivery of the Sheriff, the Party can never after have a Habere facias Possessionem: But if there be Agreement to deliver Possession in futuro, if it be denied, a new Writ may be had. But after the Year there must be a new Motion for it in Court. With this agrees Pearfon and Tavernor's Cafe; if one recovers in Ejectment, upon which the Recoveror was put in Possession per Habere facias Possessionem, and after the Defendant oults him again, if the Writ was never returned, (because then it appears not that the Plaintiff was ever out of Possession) a new Writ shall be granted. 1 Keb. 779. Ratcliff and Tate, I Keb. 785. Lowelace's Cafe, I Rolls Rep. 252. Peirson and Tavernor's Cale. It It is expresly resolved in Dame Molineux

and Falgam's Case, Palmer, p. 289.

If Habere facias Possessionem go to the Sheriff, When the and he returned Execution of the Writ, and Writ of Hat? the Writ is filed, there the Court may not fac' Possessioaward a new Habere facias Possessionem; but nem is returnbefore they may, because in the first Case the Court it appears the Party had Execution. The may not a-Council prayed, That the Defendant might ward a new file an Habere facere Possessionem, to the Intent Habere fac' that no new one may be taken out, or that Poffessionem, and why. that was taken out should not be filed after the Return of it, which the Court refuled. for the Party hath Election to return it or not, and may renew it at Pleasure till an effectual Execution be had; albeit the Party had Execution, yet if there were any fuddain Expulsion of him, he shall not be estopped. 2 Keb. 245. Underbil and Devereux.

Also, if the Sheriff give Seisin but of Part, New Habere he may have a new Habere facias Possessionem facias Posses-

for the reft.

So in Stile's Case, 2 Brownl. 216. Stiles upon a Judgment in Ejectione Firme was put into Possession by the Sheriff by Habere facias possessionem, and after the Desendants enter again, and the Writ was returned, but not filed. Per Cur', He may not have a new Writ of It is at the Execution, but is put to his new Action, and Election of the Filing of the Writ is not materal, for it the Sheriff, is in the Election of the Sheriff, if he will re- will return it turn it or not. But if Execution had not or not. been fully made, as in case of Persons hiding themselves in the upper Loss, and after the Sheriff was gone they ousted those that were in Possession, in this Case a new Writ of Execution

whether he

Where the firft Writ is not fully executed, the Court will grant a new one.

If the Sheriff

Acres than

are in the

Writ.

cution was awarded. But by the Chief lu. stice, if the Sheriff put a Man in Possession. and after the other enter forthwith, in this Case the Court may award an Attachment against him for Contempt against the Court; and so an Attachment was awarded upon Affidavit in Gallop's Case, 2 Brownl. 253. this Purpose is Upton and Well's Case, I Leon, Upon the Habere fac' Possessionem, the Sheriff returned, that in the Execution of the faid Writ he took the Plaintiff with him, and came to the House recovered, and removed thereout a Woman and Two Children, which were all the Persons which upon diligent Search he could find in the faid House, and delivered to the Plaintiff peaceable Possession to his Thinking, and afterwards departed; and immediately after, Three other Persons, who were fecretly lodged in the faid House, expulsed the Plaintiff again: Upon Notice of which he returned again to the faid House, to put the Plaintiff in free Possession, but the others did resist him, so as without Peril of his Life, and of them that were with him in Company, he could not do it. And upon this Return, the Court awarded a new Writ of Execution, for that the same was no Execution of the first Writ, and also awarded an Attachment against the Parties. 1 Leon. 145.

If the Sheriff delivers more Acres than are delivers more in the Writ, this makes not the Writ erroneous, but Action on the Case lies against the Sheriff for doing it; but if the Writ of H4bere fac' Possessionem contains more Acres of Land than were in the Declaration, the Writ

is erroneous.

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Upon Ejectione Firme, and Judgment Hab' Where Hab' fac' Possessionem shall be after the Year without fac' Possession' shall be after a Scire fac' as to the Damages, yet it's not the Year absolutely requisite that there should be without Scire any Scire fac' as to the Land; for if the Par-fac'. ty take Possession of other Land than he ought, Trespass lies, I Sid. 351. Okey and Scire fac' is given in personal Action per Stat. W. 2. where the Remedy was after the Year to commence a new Action on the fame Judgment, which cannot be in this Case as to Land, though it may be as to Damages; on Judgment for Damages, Costs or Debt, there must be a Scire fac', for here is a Perfon certain charged; not so in Hab' fac' Pofsessionem, 2 Keb. 307. Mesme Case; but the Not to be Hab' fac' Possessionem shall not be granted an granted after Year after the Judgment without a Motion the Year, without a in Court. And if it be once executed, tho' Motion in the Parties are turned out prefently by a Court. Trick, yet they may not have a new Hab' fac' Possinem without Motion of the Court. Siderfin, p. 224.

Note, It was a Question in one Hills's Cale, upon the Statute of Maintenance: A Man was out of Possession, and recovered in Ejectione Firme, and was put in Possesfion by Habere fac' Possessionem, Whether he might fell prefently? And adjudged he might. Godb. p. 450.

Upon the Habere fac' Possessionem the Sheriff may break open the House to deliver Posses-

fion. 5 Rep. 91.

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Return de Hab' fac' Possessionem cum Fieri fac'.

Dirtute istins brevis mihi direa' 24 die Maii Anno infra scripto Pabere feci infra nominat H. H. Possessonem Termini sui infra scripti de Tenementis infra script cum pertin ac etiam Fieri feci de Terris & Catallis infra nominat W. W. 205. Parcel Damnod infra script & denarios illos haber cozam Justiciariis infra script' ad Diem & Locum infra content ad reddend prefat H. prout interius mihi precipitur.

Of Misdemeanors in Possession.

In Ejectment, Declarations were delivered; and on Verdict, Evidence was found for the Plaintiff against some, and Judgment against the casual Ejector for others, in the whole 47 Houses. Upon Colour of Hab' fac' Possessionem the Sheriff turns out of Possession these 47 Tenants, and 80 other Tenants also, without any Process or Plea against them, for the Execution of which Writ the Sheriff took of the Plaintiff 200 % for Fees. 1. The Court would not grant any Writ to Supersede this Execution against the 80, for if so, then it ought to be Quia erronice, and there was not any Error in the Proceedings against them, because there was no Proceedings against them; but they may bring Trespass against the Sheriff, and the Sheriff shall be indicted for Extortion, for they cannot take such Fees in case of real Estate as personal, 2 Sid. 155. There

Sheriffs Fce.

There is a remarkable Case in Siderfin 254. the King against Farr. Farr being a Sollicitor, had obtained a Judgment against the casual Ejector, upon which he fues Hab' fac' possessionem, and the Sheriff's Bailiffs enter the House with him, and break the Door where the Goods were, and take the Woman to whom the House and Goods belonged, and required of her special Bail, and for want of it brought her to Newgate; then Farr took the Goods. which were of great Value. And upon Trial at the Old Baily it appeared, That Farr did this with Intent to take away the Goods, and had no Colour of Title to the House for his He was found guilty of Felony, and was hanged, not being able to read, though he were a Sollicitor.

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The Court was moved for an Attachment against J. upon an Affidavit that he had ejected one out of Possession that was put in by Hab' fac' possession, and that in a very riotous Manner, and had imprisoned the Party so put out of Possession. The Council on the other Side answered, That the Party came into the Land by Vertue of an Eigne Judgment, and an Extent upon it. Rolls; Here is Title against Title, therefore take your Course in Law, for we make no Rule in it. Stiles, p. 318.

Fortune and Johnson's Case.

Verdict for the Plaintiff was found in Ejectment: But upon Agreement made between the Plaintiff and Defendant, the Defendant was to hold the Land recovered for the Remainder of his Term to come, and according to this Agreement held it for Two Years; but afterwards, before his Term expired, the Plain-

V 4 tiff

tiff takes out a Hab' fac' Possessionem and executes it. It was moved, That the Desendant might have a Rule for Restitution. Per Cur', it cannot be: Take your Action on the Case against the Plaintiff for not performing his Agreement. Stiles Rep. 408. Wood and Mark. bam.

Possession was delivered by Habere fac' Posselfionem about Nine a Clock in the Morning, and towards Six at Night the Plaintiff was forcibly turned out of Possession; and this Matter being let forth by Affidavit, the Court held, that upon an Hab' fac' Possessionem it is not a compleat Execution till the Sheriff or his Bailiff deliver Possession to the Party, and are gone away; that if immediately after such Execution the Defendant turns him out of Polsession, it would be a Disturbance of the Execution, for which an Attachment ought to go. And Powell, Justice, cited a Case in B. C. where, upon an Entry upon the Plaintiff, the same Day he had Execution the Court granted a new Hab' fac' Possessionem. To which, Holt, Chief Justice, answered, So they might if the first Executions were not returned, otherwise not Qd' curia conc fit. M. 2 Anne, B. R. King. dale versus Mane,

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CHAP. XVI.

Of Action for the mean Profits: In whose Name. What Evidence (hall be given in this Action or not. From what Time. Where the Plaintiff brings this Action. What he must prove at the Trial. Where the Leffor brings this Action. What he must prove.

THE Action for the mean Profits on the In whose I Judgment in the Ejectment, shall be in Name. he Name of the Lessee during his Term. And Note, In this Action no Evidence shall What Evie given, as to the Right, which must be if dence shall be he Action should be in the Lessor's Name, Action. nd therefore he can have no fuch Remedy. Keb. 731. Sadler and Taylor.

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A Trial at Bar was prayed in Action for nean Profits. But the Court denied it, beause how good a Title soever the Defendant ath, he cannot give in Evidence any other Matter than what was before ruled. But by wisden the Title being admitted, other Mater may be given in Evidence, as a Release or ine by the Plaintiff: And the same Law is in. ation by the Leffor, in the former Action as y the Lessee, and against the Under-Tenant, r any that claim under the former Defendant's lile, especially the Contest being for Profits uring the Time of the former Action hang-

So it is faid in Harris and Wills's Case: If ecovery be in Ejectione Firme, and after Tref-

Trespass is brought for the mean Profits before the Lease, nothing shall be given in Evidence but the Value of the Profits, and not the Title; for if it should be so, then long Trials would be infinite. Also, if it be between the same Parties, the Record is an Estoppel; so the Court held it should be, if it were against Under-Tenants. But the Court granted a Title at Bar, in Assurance they would not insist up on the Points formerly adjudged, but admirit, and insist upon new Title. Siderf. p. 239. Collingwood's Case.

In 1 W. & M. The Court was moved to fet aside a Verdict, recovered in an Action for the mean Profits after Recovery in Ejectment, shewing that the Desendant in the Ejectment had brought another Ejectment since, and recovered; so that the first Recovery was disaffirmed, and therefore there ough to have been no Recovery for the mean Profits; but the Motion was denied, per tot. Com

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2 Ventris Reports.

Trespass lies by Recoveror in erroneous Judgment for a mean Trespass; because the Plaintiff in a Writ of Error recovers all mean Profits, and the Law by Fiction of Relation will not make a wrong Doer dispunishable 13 Rep. 22. But contra, where Act of Parlia

ment reffores.

In Trespass with continuando to recove mean Profits, an Entry and Possession of the Land before the Trespass must be proved and also, another Entry after the Trespassion is the principal Person look'd upon the Law to sue for the mean Profit 2 Keb. 794.

The Law of Ejeaments.

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A Termor being outlawed for Felony, granted his Term and Interest to the Plaintiff, who is put out by J. S. and after the Outlawry is reverled; and the Plaintiff brought Trespals for the Profits taken between the Outlawry reversed and the Affignment: Adjudged, that the Action did lie; for tho' during that Time the Queen had the Interest, and the Affignee had Right, yet by the Reverfal it is as if no Outlawry had been, and here is no Record of it. Cr. Eliz. 270. Ognell's Case. It was held by Justice Vernon, where a Man would recover the mean Profits in Trespass, he must prove Entry into every Parcel, and not into one Part in the Name of An Action of Trespass came to Trial before T. for recovering the mean Profits, and the Trespass was laid the 11th of May with a Continuation, and the first Entry was before the 17th Day; and an Ejectment had been brought of this Land the same Assizes; and becaule a fecond Entry is required to recover the mean Profits, the which, if it shall be, will happen after that Time which he hath acknowledged himself out of Possession by his Action of Ejectment, and such Entry will abate the Action; it was directed to find Damages for the first Entry only.

It is a Rule in Law: By the Re-entry of the Disseise, he is remitted to his first Possession, and is as if he had never been out of Possession, and then all who occupied in the mean Time, by what Title soever they come in, shall answer to him for their Time; as if a Disseisor had been disseised by another, the first Disseise re-enters, he shall in Trespassion.

The Law of Ejectments.

punish the last Disseisor; otherwise, after his Re-entry, he should have no Remedy for his mean Profits.

Note, In Trespass for mean Profits, Special

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Bail is always given. I Keb. 100.

Writ of Enquiry for mean Profits how abates.

Writ of Enquiry for mean Profits abates by Death after Judgment, and before or pendent Error, but after affirm'd is in Mitigation. Warren and Orpwood. 3 Kcb. 205.

Where one declares on a Fictitious Leafe to A. for three Years, and within the same Term declares of another Fictitious Leafe to B. of the same Lands; the last is not good for Trespass, for the mean Profits must be brought

in the first Lessee's Name, ut dicitur.

It's a Note in Siderf. p. 210. If one recover, and had Judgment in Ejectione Firme, according to the usual Practice, by confessing Lease, Entry and Ouster, &c. it was a Doubt by the Court, if upon such Confession, Lessee may have Trespass for the mean Profits from the Time of the Entry confessed; for it seems it is an Estoppel between the Parties to say, That he did not enter. Tamen Quære, because this Confession is taken to Special Purpose only. Siderf. p. 210.

If a Writ of Error in Ejectment abates by the Act of God, a second Writ shall be a Supersedeas. Aliser, where it abates by the Act

of the Party. I Vent. 353.

Judgment in Ejectment. The Defendant (Plaintiff) brings a Writ of Error. The Plaintiff, who is Defendant in the Writ of Error, brings a Scire fac. Quare Executionem non, to the Intent the Defendant, Plaintiff in Error, might affign Errors. To which the Plaintiff

In whose Name.

tiff in Error pleads, That the Defendant ought not to have Execution, because he was in Possession already, by Vertue of Hab. fac' Possessionem. Per Cur. It's a Trick for Delay, the Scire fac' being only to the Intent that the Desendent may afsign Errors, and there can be no such Plea to it in Stay or Delay of Execution. I Keb. 613. Winchcomb's Case.

Note, Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the mean Profits from the Time of the Defendant's Entry laid in the Declaration, and at the Trial it is not necessary to prove any Entry of the Defendant, because the Defendant doth in the Rule consess Lease, Entry and Ouster; and also an Entry by the Desendant upon the Plaintiff is found by the Verdict against him. And this Action may be brought either by the Plaintiff in the Action, or by the Lessor of the Plaintiff; and where the Plaintiff brings it, he need only at the Trial to produce his Poster of his Recovery.

But where the Lessor brings it, he must prove his Title over again, if it be insisted upon on the other Side, or else he will be

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CHAP. XVII.

Writ of Error.

Where it lies. Of what Error the Court shall take Conisance without Diminution or Certificate. Variance between the Writ and Declaration. Variance between the Record and the Writ of Error. One Defendant dies after Issue and before Verdict. Nonage in Issue on Error where to be tried. Amendment of the Judgment before Certiorari unaided. Release of Errors from one of the Plaintists in the Writ of Error, bars only him that released it, and why. Outlawry in one of the Plaintists pleaded in Error. Of Release of Errors by casual Ejector.

Where it lies, Ejectment before Justices pin Wales.

Eror lies in B. R. upon a Judgment in Ejectment before the Justices in Wales, per Stat. 27 H. 8. Error in Real Actions shall be reversed in B. R. and in personal Actions by Bill before the President and Council of the Marches; and because Ejectment was a mix'd Action, there was some Doubt, but it was resolved, ut supra. Moor p. 248. No 391.

Writ of Error lies in the Exchequer-Chamber upon a Judgment in a Scire fac' in Ejectione. Sid. Cro. Car. 286.

Lessor or Lessee may have a Writ of Error on Judgment in Ejectione. Sid. 317.

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In a Writ of Error upon a Judgment in Of what Er-Banco in Ejectione Firme, is certified a brief ror the Court Entry of the Writ according to the Course Constance there, and then the Declaration at large, and fans Certiby the Recital of the Writ which mentions ficate. that the Action is brought de Rectoria de D. viginti Acris terræ & duodecim Acris prati cum pertinentits in D. And the Declaration is of a Lease by Indenture of the said Rectory and Tenements cum pertinentiis (excepta terra pro mensa Vicarii ibidem cum omnibus talibus easiamentis quales Vicarius adtunc babuit cum omnibus talibus decimis, &c.) And upon Not guily, a Verdict and Judgment was for the Plainiff, and affigned now for Error, That Judgment was given pro Querente; whereas it ought obe for the Defendant. And after In nullo ferratum pleaded, it was moved for Error, That it appears by the Record certified, that he Writ is general of a Rectory, and the Declaration is of a Rectory with certain Exeverse the Judgment for this Cause, in as tween the much as this is not assigned for Error, nor the Writ and Debe Writ it self certified; so that the Court nay not take Notice that the Writ is as the entry of it is certified; and this Exception s but a Variance between the Writ and the Declaration Declaration, and perhaps this Exception in Declaration he Declaration was but ex abundantia, and with an Exmber tions. not Parcel of the Rectory, and then he ception and ught not to have demanded the Rectory Pleading in Error with an Exception. And it feems it had not fuch Cafe. ten a good Plea for the Defendant in the rft Action, to fay that it appears by the Dearation that there is an Exception, &c.

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The Law of Ejectments.

without Averment in Fact, that it is Parcel of the Rectory. Pal. 11 Car. B. R. Gregory and Sbepard, on a Leale made by the Dean and

Chapter of Peterborough.

Error upon a Recovery in Ejectment out of the Court of Durham. The Error affigned was the Infancy of the Plaintiff in the Ejedment, who appeared by Attorney where he ought to have appeared by his Guardian: and upon Issue joined on the Infancy, it was found for the Plaintiff in the Writ of Error. But this Writ of Error was not sufficient to the Court to proceed to the Reversal: 1. Because the Writ of Error is directed to the Bilhop of Durbam and others by Name, to remove a Record of Ejectment between such and fuch, which was coram the faid Bishon and feven others by Name, and the Record removed, feems to be a Record of Ejectment before the Bishop and eight others, so it is not the fame Record specified in the Will for a Record before eight, and a Record be fore seven, cannot be intended the same Re cord. 2. This Writ of Error is directed to the Bishop of Durbam and six others by Name and the Return of the Writ (viz.) Respons the Commissioners is by the Bishop and five others only, without making Mention of the fixth Commissioner. Yelv. p. 211. Moreton. 2 Rolls Abr. 604.

In Ejectment, Verdict was given pro Que Quoad ill' parcel' Messuagii prædict' jaun proxim' ad Messuag' modo F. N. continen' ex Bi real' parte, &c. & quoad resid' pro Def. an the Judgment was, Quod Quer' recuperet term num suum prædict' de C. in prædict' para

Variance between the Record and the Writ of Error.

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prædicti Messuagii jacen' proxim' ad prædict' Meffuag' ut præfertur in occupatione prædicta F. N. & continen'; whether this Variance between the Verdict and Judgment be Error. Adjournat'. Qu. If it be not a Jeofail deins Art. Stat. 16, 17 Car. 2. c. 8. Raym. p. 398. Nor-

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Ejectione Firme against Two, if after Issue Death of one joined, and Venire fac' awarded, one of the Defendant Desendants dies; and after a Verdict is gi-dying after ven at the Nisi-prius for the Plaintiff, and af- Issue pleaded, ter before Judgment the Plaintiff surmiseth Verdict. the Death of the one, ut supra, and prays Judgment against the other, and Judgment given accordingly without any Answer to it by the Plaintiff; if it be not true that he is dead, as was furmifed, this may be affigned for Error, for in as much as the Plaintiff had made this Surmise, it being a Matter of Fact, and the Plaintiff might not have any Answer to it (the Use not being to enter up this, that the Plaintiff does not deny it) the Plaintiff had no other Remedy but to allign this for Error. But this is reported otherwise, p. 767. 1 Rolls Abr. 756. Tiffin and Lenton.

If A. bring Ejectione Firme against B. and C. and after Issue joined B. dies, and after upon the Hab. Corpora, which mentions the Issue to be between A. of the one Part, and the faid B. and C. a Verdict is given against B. and C. that they are guilty, and Damages against them; but a Surmise is made of this before Judgment, and fo Judgment given only against C. This is not erroneous, altho' the Verdict

was against both, in as much as the Judgment was only against him who was in Life. 1 Rolls

Abr. 767. Tiffin and Lenton.

Nonage in be tried.

If A. recover against B. in Ejectione Firme in D. upon which B. brought a Writ of Er-Issue upon Er- ror in B. R. at Westminster and discontinues ror, where to it, and after there brought a new Writ of Error, Quod coram vobis residet, and affigns for Error, That the faid A. at the Time of the Trial of the first Action was Commorans. and within Age, at Westminster in Middlesex, and that he fued in the faid Action by Attorney, and upon the Nonage the Parties are at Issue; this shall be tried in Westminfter, and not in D. where the Land lies, because the Ejectione Firme is not any real Action; and in as much as it is specially alledged that he was within Age and commorans at Westminster when the Writ of Error was 2 Rolls Abr. p. 604. Orde and brought. Moreton.

Deins Age.

Error of a Judgment in Ireland in Ejed. ment was affigned, that the Plaintiff then De. fendant was per Attornat', and within Age, Judgment was reversed notwithstanding 17 Car. 2. c. 8. Vide 3 Keb. 384. D. of Albermarl and Keneday.

In Ejectment one of the Defendants pleaded Not guilty, and Verdict for the Plaintiff against both, and Judgment accordant. Error was brought, because in the Venire Constantinus Callard was returned, and so named in the Distringas; but in the Pannel annexed thereto Constantius Callard was returned and fworn, and fo was returned by that Name

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Name on the Back of the Postea; this was held manifest Error, for they be distinct Names of Baptilm, and cannot be amended; but Curia advisare from Hillary Term till Pasche; in the mean Time the Defendant in the Writ of Error obtained a Release of all Errors from one of the Plaintiffs in the Writ of Error, and the first Day of Term Pasch, pleaded it in Bar as a Plea Puis darrein Continuance, and thereupon a Demurrer was entred in the Names of both the Plaintiffs in the Writ of Error; for in nullo est Erratum being pleaded before, there could not now be any Summons and Severance. Per Curiam, Release from this Release shall bar him only that released one of the it, and not the other Plaintiff (though the Plaintiffs in Action was in the Personalty): For the Plea bar only him being by Way of Action, to discharge them- that released selves of Damages which were recovered it, and why. against them, and to be restored to the Posfession which was lost by the first Judgment; and they being joined in the first Action by the Act of the Plaintiff, and their own voluntary Act; it is not Reason that the Act of one shall charge or prejudice the other. But otherwise if they had been Plaintiffs in the Record by their own Act. Cro. Fac. 116. Blewit and Snedstow.

Verdict was pro Quer' for 10 Messuages, 15 Acres of Land, 15 Acres of Meadow, and 20 Acres of Pasture, and as to the Residue Non Culp. And the Judgment was, That the Plaintiff should recover the Messuages and the greater Quantity of Acres which were in the Verdict. Upon which the Plaintiff

Error, shall

Amendment of the Judgment before 2 Certiorari awarded in Error.

Release of Errors from one of the Plaintiffs in the Writ of Error pleaded, fhall bar only him that released it, and why.

Eiechment. against the Release of one shall not bar Writ of Error, because this is to recover nothing, but to have Restitution of that which he loft by the Judgment.

brought a Writ of Error, and affigned Errors, and had a Scire fac. and before the Defendant in the Writ of Error joined in nullo est Erratum, it was moved in Common Bench for Amendment of the Judgment. It was objected, 1. That the Time after the Affignment of the Error was past for the Amendment. Per Cur. The Time is not past, fo long as a Diminution may be alledged, or a Certiorari awarded, it may be amended, 2. The Judgment is the Act of the Court. and therefore may not be amended. It is the Default of the Clerk, who did not enter the Judgment according to the Verdia.

Fones Rep. p. 9.

Ejectione Firme by Two against one De. And on Not guilty, Verdict for the Plaintiff. The Error affigned was, because Constantinus Callard was returned, and fo named in the Diffringas, but in the Pannel annex'd thereto by the Sheriff, Constantius Callard was returned and Iworn, and fo was returned by that Name on the Back of the Postea. It's manifest Error; for they be distinct Names of Baptism, and not amendable. But Curia advisare. In the mean Time the Defendant in the Writ of Error obtainthe other of a ed a Release of all Errors from one of the Plaintiffs in the Writ of Error, and the first Day of Easter Term pleaded it in Bar as a Plea, Puis darrein Continuance; and thereon a Demur entred in the Name of both the Plaintiffs in the Writ of Error. For in nullo est Erratum being pleaded before, there could not be any Summons and Severance. Per Cur. This Release shall bar only him that re-

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released it, for the Plea being by Way of Action to discharge themselves of Damages which were recovered against them, and to be restored to the Possession which was lost by the first Judgment; and they being joined in the first Action, by the Act of the Plaintiff, and not by their own voluntary Act; it is not Reason that the Act of one should charge or prejudice the other, for then by fuch Practice any one might be charged, and should have no Remedy to discharge himself. And the Judgment was reversed, quoad him that did not Release, and that he should be restored to all what he lost, and quoad the other who released, that he should be barred in his Writ of Error. fac. 116. Bluit and Snedstow, 2 Rolls Ab. 411. Mesme Case.

So the Defendant in the Writ of Error Outlawry in pleads Outlawry in one of the Plaintiffs. Per one of the Cur. It's no Bar, because this is an Action not pleaded in to recover any Thing, but to restore them to Error. what they had loft, and to discharge them of Damages and Fines; and they are forced to join, because one of the Plaintists was a Delendant in the former Action. Cro. Fac. 616.

Bythell and Harris.

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Error without Bail is a Supersedeas in Eject- Error withment, notwithstanding the Act of 13 Car. 2. out Bail, a c. 2. being not within the general Word Trespals. 1 Keb. 308. Lufton's Case.

And unless all the Defendants in Ejectment do give Recognizance, it's no Supersedeas, for as to the Land it's intire. 3 Keb. 138. Cole and Leving tone.

13 Car. 2. c. 2.

X 3 Baron

Baron and it's no Error to alledge the Death of the Wife before Judgment.

Baron seised in the Right of the Feme. Feme Lessors, makes an Ejectment Lease, and the Lessee brings an Action upon it, and hath a Verdict and Judgment; it's not Error to alledge the Death of the Wife before Judgment, by which the Interest of the Husband, and Leafe by him made to the Plaintiff deter. mines, because neither the Wife nor the Husband are Parties to the Action, and this determines upon the Title to the Land; for the Plaintiff may fay, That the Husband was feised in his own Right. 1 Rolls Abr. 768. Wilks and Fordan.

The Plaintiff dead before Judgment.

Error was brought to reverse a Judgment in Ejectment in Ejectione Firme, and Error in Fact affign. ed. (viz) That the Plaintiff in the Ejectment was dead before Judgment: To which he that was Attorney for the Plaintiff pleaded. That he was alive at fuch a Place, and upon this Issue joined, and found that he was dead. Per Cur. The Issue is well joined, and the Judgment shall be reversed for this Error without Scire fac. against the Executors, for until the Issue tried, none can deny but that the Appearance was good. But the furer Way had been for the Attorney to have pleaded, Quod venit pro magistro suo D. and not 9d. D. venit per Attornat. Siderf. p. 93. Dove and Darcen.

The Plaintiff dies between Verdict and Judgment, Error.

If a Man recover in Ejectione Firme, and after his Executor fues Execution by Scire fac against the Recoveree; the Recoveree may the Judgment not avoid the Judgment, nor stay Execution is voidable by by faying, That the Plaintiff died between the Verdict and Judgment, or such like.

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he is put to his Writ of Error, for the Judgment is only voidable. I Rolls Abr. 742. Hide and Markham.

But in I Rolls Abr. 768. If a Man brings Ejectione Firme in B. R. and there he hath a Verdict on Trial at the Bar, and after, and before Judgment he dies, and after Judg- The Plaintiff ment is given against him the same Term: dies after Trial, Judg-ment may be relates to the Verdict. Hide and Mark's given. Cafe.

Lessor of the Plaintiff in Ejectment may Lessor of the have a Writ of Error upon a Judgment in Plaintiff may Ejectione Firme. Siderf. 217. Cole's Case.

Plaintiff may of Error.

Release of Error. Vide supra.

The Issue was, That H. who was casual Ejector, and gave Release of Errors, was not the same Person. Being tried, the Court would not suffer the Desendant to affign Error, but conceived he was barred now. I Keb. 755.

Keyes and Bredon.

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The Defendant obtains a Release of his ca. Issue that he fual Ejector, and pleads it to a Writ of Er-that made the ror, of a Judgment by Default, of Ejectment not the same in Ireland; altho' the Issue was, that he that Person. made the Release was not the same Person as was casual Ejector, yet per Cur. it ought to be set aside, and the Error assigned. 1 Keb. 705. Vid. 7.

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Release

Release by Casual Ejector is a Fraud.

Release by Casual Eje-Stor, a Fraud.

The Court conceived a Release of Errors obtained of the Casual Ejector by the Lessor being but Fictitious is void. And the Court made a Rule, That no such Release be accepted without Leave of the Court. 1 Keb. 740.

Keys and Bredon.

Release by Casual Eje-Stor, a Fraud.

Ejector difa-

The Case was, as it is reported in Raymond 93. Keyes and Bredon. The Plaintiff obtains a Judgment against his own Ejector, in a Case where an Infant was in Possession; and the Party, concerned in the Lands, brings a Writ of Error in the Name of the feigned Defendant. The Plaintiff in the Writ pleads the Release of the Defendant. Cur. Such Release shall not be allowed. the Court will not permit the Party to proceed to try the Issue, if the Release be good or not, because it is to bar the Right of a Third Person.

On Ejectment after Judgment against Cafual Ejector, for not confessing Leafe, Entry and Ouster; the Defendant in the Ejector's Name brought a Writ of Error, and now the Ejector was brought to the Clerk of the vows the Suit. Errors, and disavowed the Suit, and thereupon it was prayed by Council, that a Non Prof. may be entred, as is the usual Course in 2 Keb. 579. M. 21 Car. 2. Wats luch Cafe. and Lloyd.

> In the Lord Byron and Sir William Juxon's Cale, Council prayed Leave to discontinue

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a Writ of Error brought in the Ejector's Name, of Judgment in the County Palatine of Lancaster against him by Default, shewing a Release of Errors by the Casual Ejector: But the Court denied it, but lest them to nonsuit the Plaintiss in Error. 2 Keb. 853.

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A Release of Error by the Casual Ejector, no Discontinuance in Error. 2 Keb. 852.

Ejectment was brought against eight Delendants in B. C. Error was brought, grounded upon the Judgment, and the Writ was ed grave damnum ipforum, and the Judgment was only against Three, and other Five were equitted; the Error was affigned in the Nonage of the Three. Per Cur. The Writ of Error was good, tho' it might be also ad lamnum of those convicted. But being only n the Nature of a Commission, whereby he King commands the Errors to be exanined; this Matter is not material. idv. 209. By Twisden, the constant Pratice is for all to join, and per tot. Cur. Judgnent ought to be reverfed against all. Error a Judgment in Ejectione Firme, and in the Record a Space was left to infert the Cofts which had not been taxed, if such an imerfect Record be certified; yet it might e amended by Rule of Court there, and hen if it be removed by Error, the Court here must amend it. For it is the constant ractice, That if a Record be removed into he King's-Bench out of the Court of Comon Pleas by Writ of Error, and afterwards mended by Rule of Court in the Common-Pleas.

Pleas, the Court of King's-Bench must amend it accordingly. Vid. Hard. p. 905. 1 Ventr. 165. Bell and Richards.

Ejectment was brought in C. B. in Ireland. and declares against Commyn de Castrovilla & Terris de Kilborough, in such a County. Plaintiff had Verdict and Judgment. Com. myn brought a Writ of Error in B. R. in Ire. land, and affigns for Error the Want of an Original. The Plaintiff rejoins, That such a Day an Original Writ was delivered to fuch a one, and concludes to the Country. And the Judgment was reversed there for Want of an Original, on which the Plaintiff brought a Writ of Error for Reversal in B. R. in Eng. And the Judgment given in B. R. in Ireland was reverled here, for the Matter was discontinued. Because the Defendant in Ireland concludes al Pais, where in Truth the Matter of his Plea should be tried by the Record, and the Plaintiff in Error doth not reply, or demur upon the Plea of the De fendant, and so all is discontinued. Also, there was another apparent Error in the Declaration, viz. the Action brought De caffin villa & terris in Kilborough, without express fing the Number and Certainty of Acres, and upon fuch general Demand no Habere fac Rossessionem can be awarded and executed

Yelv. 117. St. John verl. Commyn.

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More Rules in Ejectment.

By Order made 18 Car. 2. General Rules in Ejectment must be entered before any Motion be made for Judgment against the Casual Ejector. B. R.

Aum p antiquam confuctud huius curie regule ad respond dari & intrare debeant cum Cferico regularum huius Cur in omnibus actionibus in Cur hie prolat & penden'. Que quis dem consuetud nuper neglea' fuit in actionibus Trans & Gjea' firme, pro evitatione cujus in futuro Ozdinat eft of quilibet Attoz' hujus Curie intrabit cum clerico regulario general', res gulam ad respond in omni actione Cranfg & Gjed' firme prolat' pring quam aliqua motio faa' fuerit in Curia p judicio versus casual' Giectorem. Martis por' poft Daah Sance Crin. Anno 18 Car. 2. Regis.

B. R.

Rule; That Attorney's delivering Declarations in Ejectment, sue out a Latitat, &c. before they sign Judgment against the Cassual Ejector.

E ulterius Oedinat est quod omnes Attoenat hujus Curie qui delibe rabunt vel deliberari causabunt alis quam

quam Parrationem in prito Trans & Cied' firme alicui Tenen in polion aliquary terrarum seu Tenementozum prosequeretur bie de Latitat versus cafual' Giectod & afflabunt commune Ballin pro con antequam fignabunt indicium verlug casual Gjecog in ali qua tali Aaione.

B. R.

Die Martis prox' Post Oct. Sancte Trin. Anno 14 Car. 2.

Rule: That the Plaintiff's Attorney fue forth a Bill of Middlesex or Latitat against the Casual Ejector, and to file Common Bail before Declaration delivered to the Tenant in Possession.

Midinat est p Cur qu in qualibet actionem de plito Trans & Gjed' firme, foge polat fi terre funt jacen in Com Middlefer, tunc billa de Mid dlefer, profecut fuerit & fi terre funt jacen extra Middlefer tum bid de La: titat profecut fuerit verlug cafual' Gie tod in qualibet tali Gjectione befend Ac etiam quod commune nominat. Ballium pro tali Defend affictur ante quam ulla Declaratio p Billam in hu'modi Aaione deliberat fuerit alieut Tenenti in possessione tenementozum in hujulmodi Parratione Specificat. quod fi Attorn hujus curie pro Quet defecerit in pfozmatione inde tune nuls lum

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lum judicium intretur p Quer versus casual' Gjedod nec Tenens in posses, sone rogd dimisson intration & ejecion tenementozum in tali Parratione mentional ad triand exitum inter partes pdicas.

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B. C.

Rule; In Middle fex and London, to tell the Tenants how and when to appear, and Motion for Judgment, must be according to this Rule.

7 Teefimo primo die Junii, 32 Car. 2. Ordinat est quod Quer bel eord Attorn fibe partes que deliberari fac Parrationes in prito Pdia' in dia' Com Middlefer & Long super tali delibera= tione inde denuntiabunt Cenen in polessone tenementozum in questione res perive at ipsi compareant per Attorn Cur hie in Defensione tituli inde initio pr' termini post deliberation Parr ill' lad'. Et ulter Ordinat eft ad queren dia' de cetera nil capiant per motio= nem in Cur hic fiend ad judicium berlus calual' Ejedod pro defenu compa= tentie habend niff hujulmodi motio fat infra unam feprimana pzor' post pzi= mid diem cujuaibet Cermini Sana' Mich. & enjuaibet Termini Pasche. Et mfra 4 dies pror'post primid diem enjusibet Termini Sana' Bill. & eujufibet Cermini Sana' Trin.

Judicium

PRECEDENTS.

Judicium in Eject' Firme, quando Def' confitetur Actionem & Quer' remittit damna.

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E fuum ven & dicit go iple non pe test dedicere actionem ipuns quer ne quin ipfe culpab fit de Cranfgr & Gie aione poia' Modo & Fozma pzout idem (Quer) superius versus eum Parrabit E Parracone Poix' in omnibus foze be qui ram expzels cognovit. Idea considerat 40 est quod Poix' (Quer') recuperet versus Et Poix' (Deft.) termind sund de Ein Met damned Poix' cum pertid adhuc ventur at de damned Poix' nec non decem solid poix mis Ecustaz suis per ipsid circa Set sen suam in hac parte apposit' eid (Quer) tan per Tur Dom Regine hic ex assensus in ton solid put indicat que quidem damna in ton solid put indicat que quidem damna in ton solid ad judicat que quidem damna in tott bfai fe attingunt ad, Ec. Et poid' Def' ca piatur. Et luper hoc pdia' (Quer') gra tis hic in Curia remittit eid Deft damna mis & cuftag prediaa. 7 dec Pdia' (Det') de damnis milis & custa illis fit quietus, &c. Et fuper hoc iden (Quer') petit breve Dom Acgine de ha flut bere faciend ei plenar possesson de to soza nementis pdia' cum pertin' & ci como vien dit, Ec. retord coram Domina Acgin San apud Westin die, Ec. extunc pror' st quent', Ec. idem dies datus est presa rine Querent ibm, Ec. Tudicium la i Judicium in Eject. Firme.

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TDeo confiderat eft quod Poia' (Quer) recuperet bering poin' (Deft.) ters min fun adhuc bentur de & in poic' 20 Acris prati ac damna sua pdia' v Aurat poia' in forma poia' affessa nec non cl. pro miss & custag suis per infum circa fexam fuam in hac parte apem poit eid (Quer) ex assensu suo p Tur but Dom Regine hic de incro adjudicat que quidem damna in toro se attingunt ad rat 401. Equod Pdia' (Des') capiatur, Ec. sus Et super hoc Pdia' (Quer) petit bze del Doud Regis de Pabere sac' Possession and de tenementis Vdia' cum pertin presat de tenementis poia' cum pertin prefat vie ejusdem comit in fozma pdia' diri= set gend & ei concedit', Ec. retoznabile co-let ram Dom Regina apud Westim die, im &c. pzor' post, &c. idem dies datus est ton hat Querenti ibin, &c.

ntracio judicii pro Def' in plito' Trans' & Eject' Firme.

stal Dosten contin inde Processu inter den partes pdia' de prito pdia' per ha furm pdia' inde inter cos in respectam e to cam Dom Kegina apud Mestim usque ma diem Lune pror' post septimanas gin Sance Trin. adtunc pror' sequem nise dia' E stdelis conssiarius Dom Kezesa inc Johan. Popham miles Capital' susticiar Dom Kegine ad prita in Cuscie ia ipfius Dom Regine ad plita in Cuaina

gina tenend affign prius die Sabl pzor' poft Ocab. Sande Erin. a Buildhall London p formam Stat, Den pro defeair Jurat, &c. Ad gi diem Lune pror' post tres septima Sance Trin. cozam Dom Regina a Westim bener partes poin' per Al nat suos poin'. Et Plat Capital' fticiar' cozam quo, Ec. mifit hic re dum fuum cozam co hie in hee be ff. Poftea ff. die & Loco infra content ram Joh. Popham mil. Capital' sticiar' infrascript' associat sibi d Bawtre per formam Statuti, &c. nit tam infra nominat L. S. quam frascript' A. p. p Attornat suos in content. Et Jur Jur unde infra mentis erad' filiter' ben qui ab beri tem de infracontent dicendi electi tr & jurat dicunt super facrum fuum pdia' I. P. non est culpabilis de tra greffione & Gjectione Firme infras prout idem Johan. interius plita allegavit. Ideo considerat est quot dia' L. nihil capiat per Willam fu Pdia' sed pro falso clamore suo indi in mia. Et pdia' J. B. eat inde die, Ec.

No Habere fac' Possessionem if the Judgment be above an Years standing, unless revived by Sci' fac'.

Note. The Court will not grant an H fac' Possessionem upon a Judgment in E ment above a Years standing, unless it be vived by Scire fac'; and where an Haber Possessionem was sued out and executed after Year and a Day without a Scire fac', a

The Law of Ejeaments.

of Restitution was awarded. Quia erronice emanavit. Mich. I Annæ, Withers's Case.

Habere fac' Possessionem in Trans' & Ejectment.

VIC. B. Saltmd. Cum A. f. ar: miger nuper in Cur' noftra cozam not p Billam fuam fine bai noftro ac p indicium einsdem Cur' recuperavit versus A. D. Ben' termin suum adhuc ventur' de & in uno Capital Meffuaj, &c. cum pertind in f. in Comit tuo necnon 200 Acr' terre cum pertin in f. pdia' que A. A. & W. P. 6 die Sept. Anno Regni noftri feptimo eid (Quer') ad ter= minid annod qui nondum preteriit dis misit vidett a festo Sanai Michael Archis Anno, &c. uso, &c. extunc pror lequend plenarie complend & finient qui quidem termin' Annod Der teriit poia' A. postea seilicet 28 bie Goob. Anno Regni nostri 7 supradia' iplum A. poffemone Meffung poia' & ceterozum pmiffozum pdia' cum pertin Di & Armis, &c. Ejecit ipsumg A. inde expulit & amobit. Idea tibi pretipimus quod pzefat' A. poffesionem fuam termini fui predia' adhuc bentur' de & in Capitali Meffuag & ceteris premins supering specifical sine dilatone habere facias. Et qualit hor he crecut fuit constare fac' not apud TI. (tali die) precepimus etiam tibi quod capias pedia' A. D. fi, &c. Et falvo, &c. Ita

gs habeas, Ec. ad prefat diem ad factisfaciend prefat A. de quincy libris & decem solid pro damnis suis que sustinuit tam occasione, transf & eject pred quam pro miss & custag suis per ipsum circa secam suam in hac parte appoit unde convicus est seut nobis constat de recordo, Et habeas, &c.

habere facias Possession' post Bzebe de Erroze in Ejectment.

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7Ill'us & Maria Dei gratia VV Anglie, Scotie, Francie, & Disbernie, Ber & Argina fidei Defensos res, &c. Die Midd falutem. Cum A. 10. nuper in Curia nostra cozam Georgio Creby Milit & Sociis mis Austiciar noftris de Banco per Bzes be nostrum ac per judicium ejustem Curie recuperabit berfus 119. P. miper de Lond, Peoman, Termin lum de & in odo Meffuagits cum pertin' in Paroch St. Martini in campis & St. Clementis Dacomm in Comit tuo que Chaistopher Cratfoed Ben' paimo die Januarii Anno Regni noftri Tertio dimilit prefato A. habend & occupand fibi & affignat fuis a vicesimo 5 die Decembzig tune ult preterit ulg finem & terminum quinos annozum extune pzor' fequen' & plenarte complend & fintend qui nondum preteriit & unde predia Ill. posten feift predict' i die Jan Anno tertio supradia' vi & armis in tenc menta predia' eum pertin' intrabit & 1D:

ipfum R. a possessione fua expulit & amobit ac cund' Kicum a firma sua predia' inde ciea' conviaus eft ficut per Insperionent Accordi & Proces inde que in Curia nostra cozam nobis virtute cujusdem Berbis noftri de erroze engrigendo per piedia" [dl. de & fuper premitis profeeur nuper benire feein É in ead Curia nostra colam nobis jam residen nobis confrat de Mecordo unde ident judicium in ead Curia nostra coram nobis affirmat est ficut nobis filiter conftat de Mecoido, Et ideo tibi pzecipimus go pzefato A. Poffesionem termini sui predia' adhue ventur de & in tenementis predict cum pertin' fine dilatione Dabere fac', Et qualiter foc Breve nostrum fucris crecut nobis in Odat Purificat beate Marie ubis cuncy fuerimus in Anglia confrare facias hoc Bzeve noltrum nobis remit= ten. Tefte Johanne Holt apud Westm bicesimo ocavo die Povembris Anno Reani nostri quart.

Holt. Colman.

Count of an House (and Goods) by Lease made by Baron and Feme of the Land of the Wife.

W. J. G. Attach fuit ad respond mis unum Wessung eum pertid in C. quod J. A. EJ. ur' ejus J. B. ad firmam dimiserunt ad Terminum 20 Annozum qui issum presar J. E. dimis

sit ad eund terminum qui nondum vies teriit, intravit & bona & catalla ad valeng 101. in eod Meffung invent cepit & aspoztavit & ipsum J. G. a firma pred' ejecit & alia enormia ei intulit ad grave damnum ipung J. G. & contra pacem Dom Regis nunc, &c. Et unde idem J. G. per J. Q. Attorn fuum queritur go pied' 10. 1 Die, Ec. Anno, Ec. bi & armis unum Meffuag cum pertin in C. qu' pzedia' I. A. & I. ur' ejus 24 Die, &c. Anno, &c. apud C. pzedia' pzefat J. B. ad firmam dimifer habend eid I. ad termin 20 Anno? reddendo inde Annuat eisdem I. A. & I. per primos tres Annos & dimid untus Anni predia' termin, &c. Qui quidem terminum nondum preteriit ins travit & bona & catalla sua videlicet duo Scabella duo Cathedzas, Ec. ad valene, &c. in eod Meffuag invent cepit & asportavit ipsum J. G. a firma fua predia' ejecit & alia enormia, &c. ad grave damnid, Ec. Et contra pacem, Ær.

Habere fac' Possessionem in Ejectione Firme tam de termino Annorum in certis tenementis quam de & pro possessione bonorum & catallorum in eisdem tenementis invent'.

No T.C. — saltm. Scias qu' consideratum est in Curia nostra cozam Justiciariis nostris apud Westin qu' J.C. habeat executionem versus quentam A. B. nuper de, Ec. termini sui de

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dicta tibi,

& in uno Meffuagio, &c. cum pertin' que A. J. Baronettus (tali Die & An: no) prefat' A. C. dimifit habend & oc= cupand fibi & affignat fuis a festo, &c. tune ult preterit ulog finem & terminum 7 Annozum extunc pzox' seguen & ples narie complend qui nondum preteriit, Et unde pzedia' A. in pzedia' Meffuag, Ec. cum pertin intravit, Et bona & ca= talla ipfius J. ad valentiam 10 Librar in eildem Meffuag, Ec. invent cepit & aspoztavit, Et ipsum J. a firma & sua pzed' ejeeit, Adeo tibi pzecipimus go prefat I. plenarium possessione & restis tutionem & termini fui predia' de & in tenementis predic' cum pertin ac bonozum & catallozum pzedia' haber & deliberar' fac, Et qualiter hoc precept nostrum fuerit execut constare fac fite Justiciar nostrig apud Westind a die sance Trinitat &c. in treg septiman am Ca' Sa' pro damnis.

—— (At supra ulcz septimanas) Precipimus etiam tibi qui capias predix' (T. Oct') si invent sucrit in balliva tua E cum salvo custod, Ita qui Pabeas sipus ejus coram Justiciariis nostris apud Westim ad presat terminum ad satisfaciend presat I. de 7 Libris que eiu I. in cad curia nostra adjudicat sucrunt pro damnis suis que habuit occasione trans E ejectionis predicar unde convicus est. Et habeas

tibi, Ec.

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Count upon a Demise Parol.

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Hertford'ff. T W. nuper de 33, in Com pzedia', Proman, Attach fuit ad remond f. D. Arm' de placito quare vi & armis unum Melfuag, &c. cum pertid in Bartsborn que Sulanna Andzews viv pzefat f. ad terminum qui nondum preterit intrapit & ipfam a firma fua pzedia' eje cit, Et alia enozmia ei intulit ad grave daminum iphus F. & contra pacem Dom Gegis mine, Ec. Et unde ibem S. per Begggium D. Attornat fanna 7 Die Jeb Anno flegni Do mini Regis nune quarto becimo apud Buchep pzedia' dimitiffet eid f. tene menta predica cum pertin Dat & to nen eid f. a decimo ocabo Janu arii tune ule preterit ulog finem E terminum vigine E unius Annozum extune prox' lequem E plenarie complend & finiend birtute cujus biminionis idem f. in tenementa predict cum pertin intrabit & fuit inde poffemo nat iploof f. he inde possessionat ext ften predia' Johannes postea seit 8. Die Feb Anno quarto decimo in pradia' bi & armis, &c. tenementa bi & armis, Ec. tenementa predida eum pertid que predia, Su fanna civ f. in forma predia' dimiff ad terminum predict' qui nondum pie terit intrabit, Et ipfum a firma ful predia ejecit, Et alia enormia, &c. al arab

grabe damnum, Ec. Ac contra pascem unde dicit go deteriozat est ad vastentiam cent Libzar & inde product secam, Ec.

Simile, with a Simul cum de placito quare predict? W. (Simul cum W. H. nuper de, &c. & H. H. nuper de, &c.) vi & armis.

Smile.

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PER a Demise pzo 5 Years, Si J. D. E. D. & D. H. fratres & sozozes de Tessoz tambin virevint.

In the Count, —— Plenarie complend E finiend & J. H. E. H. E H. H. fratres & sozozes natural ipsus Jacobi (Lessee) vel aliquis scu alter cozum tamediu vivere contingerent) virtute cujus dimissionis, &c.

—— Dimiliset prefat AD. predict' moslendinum aquaticid cum pertind habent Etenend sibi & assignat suis a sigillatione & deliberatione Indentur predict use finem & terminum 5 Annoqum extunc prox' sequend, &c.

Hab' fac' Posses' versus Exec's pro defalt'.

VIC, Ec. Scias 98 C. B. in Curia nostra cozam Justiciar nostris
apud Mestm per considerar ejustem
Curie recuperabit terminum suum de
uno Messuagio, Ec. cum pertinens
bersus M. F. & G. F. Erecutozes
Testament cujus A. F. nuper de C.
Y 4

de Com tuo Peoman, per defalt iplorum M. & G. que K. B. Gen tali vie & Anno prefat A. dimist haben & occupand sidi & asign suis a sesto, &c. tunc ult preterit usoz sinem & termind & Annorum ertunc pror' sequen & psenarie complend qui nondum preterit, Et unde predia' A. &c. in dite sua ipsum T. a possessione sua predia' expulit eor & amodit ac eundem T. a sirma ejecer, Ideo tidi precip' gu presat T. possession suam termini sui predia' adhuc bentur de & in predia' tenementis cum pertin sine dilatione habere sac, Et qualiter, &c.

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